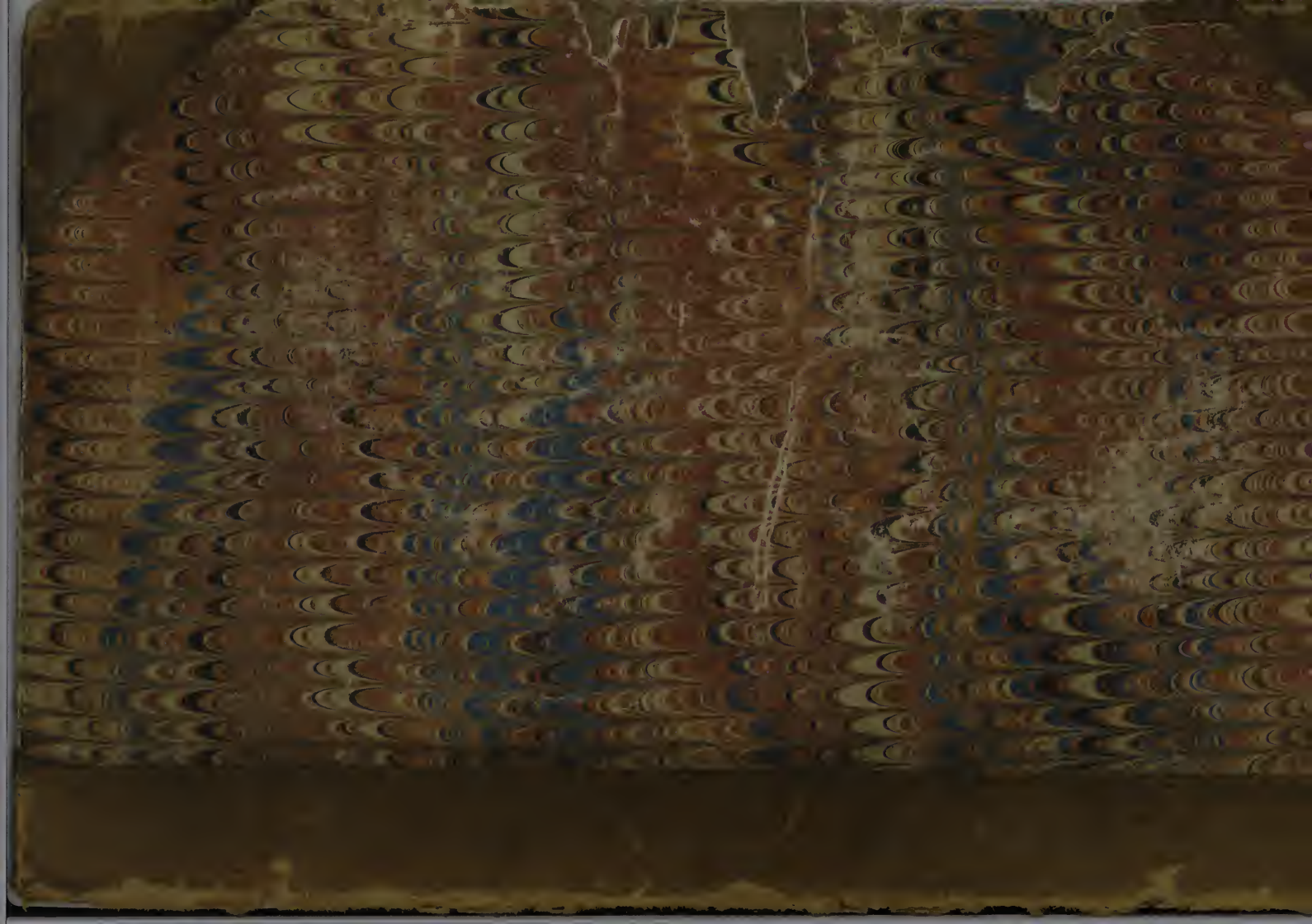

CHARLES THE FIFTH.

From an original painting by Titian

Engraved by John J McCarty

THE

HISTORY OF THE REIGN

OF THE

EMPEROR CHARLES THE FIFTH,

BY

WILLIAM ROBERTSON, D.D.

WITH

AN ACCOUNT OF THE EMPEROR'S LIFE AFTER HIS ABDICATION,

BY

WILLIAM H. PRESCOTT.

IN THREE VOLUMES.

VOL. I.

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ADVERTISEMENT.

THE life of Charles the Fifth subsequently to his abdication is disposed of by Dr. Robertson in some six or seven pages. It did not, in truth, come strictly within the author's plan, which proposed only a history of the reign of the emperor. But unfortunately these few pages contain many inaccuracies, and, among others, a very erroneous view of the interest which Charles, in his retirement, took in the concerns of the government. Yet it would be unjust to impute these inaccuracies to want of care in the historian, since he had no access to such authentic sources of information as would have enabled him to correct them. Such information was to be derived from documents in the archives of Simancas, consisting, among other things, of the original correspondence of the emperor and his

household, and showing conclusively that the monarch, instead of remaining dead to the world in his retreat, took not merely an interest, but a decided part, in the management of affairs. But in Robertson's day, Simancas was closed against the native as well as the foreigner; and it is not until within a few years that the scholar has been permitted to enter its dusty recesses, and draw thence materials to illustrate the national history. It is particularly rich in materials for the illustration of Charles the Fifth's life after his abdication. Availing themselves of the opportunities thus afforded, several eminent writers, both in England and on the Continent, have bestowed much pains in investigating a passage of history hitherto so little understood. The results of their labors they have given to the world in a series of elaborate works, which, however varying in details, all exhibit Charles's character and conduct in his retirement in a very different point of view from that in which it has been usual to regard them. It was the knowledge of this fact which led the publishers of the present edition of Robertson's "Charles the Fifth" to request me to prepare such an account of his monastic life as might place

before the reader the results of the recent researches in Simancas, and that in a more concise form — as better suited to the purpose for which it was designed — than had been adopted by preceding writers. I was the more willing to undertake the task, that my previous studies had made me familiar with the subject, and that I was possessed of a large body of authentic documents relating to it, copied from the originals in Simancas. These documents, indeed, form the basis of a chapter on the monastic life of Charles at the close of the first Book of the History of Philip the Second, — written, I may add, in the summer of 1851, more than a year previous to the publication of Mr. Stirling's admirable work, which led the way in the series of brilliant productions relating to the cloister life of Charles.

In complying with the request of the publishers, I have made the authentic records which I had received from Simancas the foundation of my narrative, — freely availing myself, at the same time, of the labors of my predecessors, especially those of Mr. Stirling and M. Mignet, wherever they have thrown light on the path from sources not within my reach.

In the performance of the task I have been insensibly led into a much greater length than I had originally intended, or than, I fear, will be altogether palatable to those who have become already familiar with the narrative in the writings of those who have preceded me. To such readers I cannot, indeed, flatter myself that I have given any information of importance beyond what they may have acquired from these more extended and elaborate works. But by far the larger part of readers in our community have probably had no access to these works; and I may express the hope that I have executed the task in such a manner as to satisfy any curiosity which, after perusing the narrative of the illustrious Scottish historian, they may naturally feel respecting the closing scenes in the life of the great emperor.

WILLIAM H. PRESCOTT.

Boston, November 10, 1856.

TO

THE KING.

SIR, —

I PRESUME to lay before your Majesty the history of a period, which, if the abilities of the writer were equal to the dignity of the subject, would not be unworthy the attention of a monarch, who is no less a judge than a patron of literary merit.

History claims it as her prerogative to offer instruction to kings, as well as to their people. What reflections the reign of the Emperor Charles the Fifth may suggest to your Majesty, it becomes not me to conjecture. But your subjects cannot observe the various calamities which that monarch's ambition to be distinguished as a conqueror brought upon his dominions, without recollecting the felicity of their own times, and looking up with gratitude to their sovereign, who, during the

fervor of youth, and amidst the career of victory, possessed such self-command, and maturity of judgment, as to set bounds to his own triumphs, and prefer the blessings of peace to the splendor of military glory.

Posterity will not only celebrate the wisdom of your Majesty's choice, but will enumerate the many virtues which render your reign conspicuous for a sacred regard to all the duties incumbent on the sovereign of a free people.

It is our happiness to feel the influence of these virtues, and to live under the dominion of a prince who delights more in promoting the public welfare, than in receiving the just praise of his royal beneficence.

I am, Sir,

Your Majesty's most faithful subject,

And dutiful servant,

WILLIAM ROBERTSON.

PREFACE.

No period in the history of one's own country can be considered as altogether uninteresting. Such transactions as tend to illustrate the progress of its constitution, laws, or manners, merit the utmost attention. Even remote and minute events are objects of a curiosity, which, being natural to the human mind, the gratification of it is attended with pleasure.

But with respect to the history of foreign states, we must set other bounds to our desire of information. The universal progress of science during the last two centuries, the art of printing, and other obvious causes, have filled Europe with such a multiplicity of histories, and with such vast collections of historical materials, that the term of human life is too short for the study or even the perusal of them. It is necessary, then, not only for those who are called to conduct the affairs of nations, but for such as inquire and reason concerning them, to remain satisfied with a general knowledge of distant events, and to confine their study of history in de-

tail chiefly to that period in which, the several states of Europe having become intimately connected, the operations of one power are so felt by all, as to influence their councils, and to regulate their measures.

Some boundary, then, ought to be fixed, in order to separate these periods. An era should be pointed out, prior to which each country, little connected with those around it, may trace its own history apart; after which, the transactions of every considerable nation in Europe become interesting and instructive to all. With this intention I undertook to write the History of the Emperor Charles the Fifth. It was during his administration that the powers of Europe were formed into one great political system, in which each took a station, wherein it has since remained with less variation than could have been expected after the shocks occasioned by so many internal revolutions and so many foreign wars. The great events which happened then have not hitherto spent their force. The political principles and maxims then established still continue to operate. The ideas concerning the balance of power then introduced, or rendered general, still influence the councils of nations.

The age of Charles the Fifth may therefore be considered as the period at which the political state of Europe began to assume a new form. I have endeavored to render my account of it an introduction to the history of Europe subsequent to his reign. While his numerous biographers describe

his personal qualities and actions, while the historians of different countries relate occurrences, the consequences of which were local or transient, it hath been my purpose to record only those great transactions in his reign, the effects of which were universal, or continue to be permanent.

As my readers could derive little instruction from such a history of the reign of Charles the Fifth without some information concerning the state of Europe previous to the sixteenth century, my desire of supplying this has produced a preliminary volume,* in which I have attempted to point out and to explain the great causes and events to whose operation all the improvements in the political state of Europe, from the subversion of the Roman empire to the beginning of the sixteenth century, must be ascribed. I have exhibited a view of the progress of society in Europe, not only with respect to interior government, laws, and manners, but with respect to the command of the national force requisite in foreign operations; and I have described the political constitution of the principal states in Europe at the time when Charles the Fifth began his reign.

In this part of my work I have been led into several critical disquisitions, which belong more properly to the province of the lawyer or antiquary, than to that of the historian. These I have placed at the end of the first volume, under the title of Proofs and Illustrations.* Many of my readers will,

* These passages in the text refer to the original edition: the addi-

probably, give little attention to such researches. To some, they may, perhaps, appear the most curious and interesting part of the work. I have carefully pointed out the sources from which I have derived information, and have cited the writers on whose authority I rely with a minute exactness, which might appear to border upon ostentation, if it were possible to be vain of having read books, many of which nothing but the duty of examining with accuracy whatever I laid before the public could have induced me to open. As my inquiries conducted me often into paths which were obscure or little frequented, such constant references to the authors who have been my guides were not only necessary for authenticating the facts which are the foundations of my reasonings, but may be useful in pointing out the way to such as shall hereafter hold the same course, and in enabling them to carry on their researches with greater facility and success.

Every intelligent reader will observe one omission in my work, the reason of which it is necessary to explain. I have given no account of the conquests of Mexico and Peru, or of the establishment of the Spanish colonies in the continent and islands of America. The history of these events I originally intended to have related at considerable length. But upon a nearer and more attentive consideration of this part of my plan, I found that the discov ery of the New World, the state of society among

tional matter incorporated in the present edition has required a somewhat different arrangement in respect to the division of the volumes.

its ancient inhabitants, their character, manners, and arts, the genius of the European settlements in its various provinces, together with the influence of these upon the systems of policy or commerce in Europe, were subjects so splendid and important, that a superficial view of them could afford little satisfaction; and, on the other hand, to treat of them as extensively as they merited must produce an episode disproportionate to the principal work. I have therefore reserved these for a separate history; which, if the performance now offered to the public shall receive its approbation, I purpose to undertake.

Though, by omitting such considerable but detached articles in the reign of Charles the Fifth, I have circumscribed my narration within more narrow limits, I am yet persuaded, from this view of the intention and nature of the work which I thought it necessary to lay before my readers, that the plan must still appear to them too extensive, and the undertaking too arduous. I have often felt them to be so. But my conviction of the utility of such a history prompted me to persevere. With what success I have executed it, the public must now judge. I wait, not without solicitude, for its decision, to which I shall submit with a respectful silence.

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OF THE

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SUBVERSION OF THE ROMAN EMPIRE TO THE BEGINNING OF THE SIXTEENTH CENTURY.

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Two great revolutions have happened in the political state, and in the manners of the European nations. The first was occasioned by the progress of the Roman power; the second by the subversion of it. When the spirit of conquest led

the armies of Rome beyond the Alps, they found all the countries which they invaded inhabited by people whom they denominated barbarians, but who were nevertheless brave and independent. These defended their ancient possessions with obstinate valor. It was by the superiority of their discipline, rather than that of their courage, that the Romans gained any advantage over them. A single battle did not, as among the effeminate inhabitants of Asia, decide the fate of a state. The vanquished people resumed their arms with fresh spirit, and their undisciplined valor, animated by the love of liberty, supplied the want of conduct as well as of union. During those long and fierce struggles for dominion or independence, the countries of Europe were successively laid waste, a great part of their inhabitants perished in the field, many were carried into slavery, and a feeble remnant, incapable of farther resistance, submitted to the Roman power.

The Romans having thus desolated Europe, set themselves to civilize it. The form of government which they established in the conquered provinces, though severe, was regular, and preserved public tranquillity. As a consolation for the loss of liberty, they communicated their arts, sciences, language, and manners to their new subjects. Europe began to breathe, and to recover strength after the calamities which it had undergone; agriculture was encouraged; population increased; the ruined cities were rebuilt; new towns were founded; an

appearance of prosperity succeeded, and repaired, in some degree, the havoc of war.

This state, however, was far from being happy or favorable to the improvement of the human mind. The vanquished nations were disarmed by their conquerors, and overawed by soldiers kept in pay to restrain them. They were given up as a prey to rapacious governors, who plundered them with impunity; and were drained of their wealth by exorbitant taxes, levied with so little attention to the situation of the provinces, that the impositions were often increased in proportion to their inability to support them. They were deprived of their most enterprising citizens, who resorted to a distant capital in quest of preferment, or of riches; and were accustomed in all their actions to look up to a superior, and tamely to receive his commands. Under so many depressing circumstances, it was hardly possible that they could retain vigor or generosity of mind. The martial and independent spirit, which had distinguished their ancestors, became, in a great measure, extinct among all the people subjected to the Roman yoke; they lost not only the habit, but even the capacity, of deciding for themselves, or of acting from the impulse of their own minds; and the dominion of the Romans, like that of all great empires, degraded and debased the human species.[1]

A society in such a state could not subsist long.

[1] Note I.

There were defects in the Roman government, even in its most perfect form, which threatened its dissolution. Time ripened these original seeds of corruption, and gave birth to many new disorders. A constitution unsound, and worn out, must have fallen into pieces of itself, without any external shock. The violent irruption of the Goths, Vandals, Huns, and other barbarians, hastened this event, and precipitated the downfall of the empire. New nations seemed to arise, and to rush from unknown regions, in order to take vengeance on the Romans for the calamities which they had inflicted on mankind. These fierce tribes either inhabited the various provinces in Germany which had never been subdued by the Romans, or were scattered over those vast countries in the North of Europe, and Northwest of Asia, which are now occupied by the Danes, the Swedes, the Poles, the subjects of the Russian empire, and the Tartars. Their condition and transactions, previous to their invasion of the empire, are but little known. Almost all our information with respect to these is derived from the Romans; and as they did not penetrate far into countries which were at that time uncultivated and uninviting, the accounts of their original state given by the Roman historians are extremely imperfect. The rude inhabitants themselves, destitute of science as well as of records, and without leisure or curiosity to inquire into remote events, retained, perhaps, some indistinct memory of recent occurrences; but beyond these, all was

buried in oblivion, or involved in darkness and in fable.[2]

The prodigious swarms which poured in upon the empire from the beginning of the fourth century to the final extinction of the Roman power, have given rise to an opinion that the countries whence they issued were crowded with inhabitants; and various theories have been formed to account for such an extraordinary degree of population as hath procured these countries the appellation of "the storehouse of nations." But if we consider that the countries possessed by the people who invaded the empire were of vast extent; that a great part of these was covered with woods and marshes; that some of the most considerable of the barbarous nations subsisted entirely by hunting or pasturage, in both which states of society large tracts of land are required for maintaining a few inhabitants; and that all of them were strangers to the arts and industry, without which population cannot increase to any great degree, we must conclude that these countries could not be so populous in ancient times as they are in the present, when they still continue to be less peopled than any other part of Europe or of Asia.

But the same circumstances that prevented the barbarous nations from becoming populous, contributed to inspire, or to strengthen, the martial spirit by which they were distinguished. Inured by the rigor of their climate, or the poverty of their

[2] Note II.

soil, to hardships which rendered their bodies firm, and their minds vigorous; accustomed to a course of life which was a continual preparation for action; and disdaining every occupation but that of war or of hunting, they undertook and prosecuted their military enterprises with an ardor and impetuosity, of which men softened by the refinements of more polished times can scarcely form any idea.[3]

Their first inroads into the empire proceeded rather from the love of plunder than from the desire of new settlements. Roused to arms by some enterprising or popular leader, they sallied out of their forests, broke in upon the frontier provinces with irresistible violence, put all who opposed them to the sword, carried off the most valuable effects of the inhabitants, dragged along multitudes of captives in chains, wasted all before them with fire or sword, and returned in triumph to their wilds and fastnesses. Their success, together with the accounts which they gave of the unknown conveniences and luxuries that abounded in countries better cultivated or blessed with a milder climate than their own, excited new adventurers, and exposed the frontier to new devastations.

When nothing was left to plunder in the adjacent provinces, ravaged by frequent excursions, they marched farther from home, and finding it difficult or dangerous to return, they began to settle in the countries which they had subdued. The sudden and short excursions in quest of booty, which had

[3] Note III.

alarmed and disquieted the empire, ceased; a more dreadful calamity impended. Great bodies of armed men, with their wives and children, and slaves and flocks, issued forth, like regular colonies, in quest of new settlements. People who had no cities, and seldom any fixed habitation, were so little attached to their native soil, that they migrated without reluctance from one place to another. New adventurers followed them. The lands which they deserted were occupied by more remote tribes of barbarians. These, in their turn, pushed forward into more fertile countries, and, like a torrent continually increasing, rolled on, and swept everything before them. In less than two centuries from their first irruption, barbarians of various names and lineage plundered and took possession of Thrace, Pannonia, Gaul, Spain, Africa, and at last of Italy, and Rome itself. The vast fabric of the Roman power, which it had been the work of ages to perfect, was in that short period overturned from the foundation.

Many concurring causes prepared the way for this great revolution, and insured success to the nations which invaded the empire. The Roman commonwealth had conquered the world by the wisdom of its civil maxims, and the rigor of its military discipline. But, under the emperors, the former were forgotten or despised, and the latter was gradually relaxed. The armies of the empire in the fourth and fifth centuries bore scarcely any resemblance to those invincible legions which had been victorious wherever they marched. Instead of

freemen, who voluntarily took arms from the love of glory, or of their country, provincials and barbarians were bribed or forced into service. These were too feeble, or too proud, to submit to the fatigue of military duty. They even complained of the weight of their defensive armor as intolerable, and laid it aside. Infantry, from which the armies of ancient Rome derived their vigor and stability, fell into contempt; the effeminate and undisciplined soldiers of later times could hardly be brought to venture into the field but on horseback. These wretched troops, however, were the only guardians of the empire. The jealousy of despotism had deprived the people of the use of arms; and subjects, oppressed and rendered incapable of defending themselves, had neither spirit nor inclination to resist their invaders, from whom they had little to fear, because their condition could hardly be rendered more unhappy. At the same time that the martial spirit became extinct, the revenues of the empire gradually diminished. The taste for the luxuries of the East increased to such a pitch in the imperial court, that great sums were carried into India, from which, in the channel of commerce, money never returns. By the large subsidies paid to the barbarous nations, a still greater quantity of specie was withdrawn from circulation. The frontier provinces, wasted by frequent incursions, became unable to pay the customary tribute; and the wealth of the world, which had long centred in the capital of the empire, ceased to flow thither in the

same abundance, or was diverted into other channels. The limits of the empire continued to be as extensive as ever, while the spirit requisite for its defence declined, and its resources were exhausted. A vast body, languid and almost unanimated, became incapable of any effort to save itself, and was easily overpowered. The emperors, who had the absolute direction of this disordered system, sunk in the softness of Eastern luxury, shut up within the walls of a palace, ignorant of war, unacquainted with affairs, and governed entirely by women and eunuchs, or by ministers equally effeminate, trembled at the approach of danger, and, under circumstances which called for the utmost vigor in council as well as in action, discovered all the impotent irresolution of fear and of folly.

In every respect the condition of the barbarous nations was the reverse of that of the Romans. Among the former, the martial spirit was in full vigor; their leaders were hardy and enterprising; the arts which had enervated the Romans were unknown; and such was the nature of their military institutions, that they brought forces into the field without any trouble, and supported them at little expense. The mercenary and effeminate troops stationed on the frontier, astonished at their fierceness, either fled at their approach, or were routed on the first onset. The feeble expedient to which the emperors had recourse, of taking large bodies of the barbarians into pay, and of employing them to repel new invaders, instead of retarding, hastened the

destruction of the empire. These mercenaries soon turned their arms against their masters, and with greater advantage than ever; for, by serving in the Roman armies, they had acquired all the discipline, or skill in war, which the Romans still retained; and, upon adding these to their native ferocity, they became altogether irresistible.

But though, from these and many other causes, the progress and conquests of the nations which overran the empire became so extremely rapid, they were accompanied with horrible devastations, and an incredible destruction of the human species. Civilized nations, which take arms upon cool reflection, from motives of policy or prudence, with a view to guard against some distant danger, or to prevent some remote contingency, carry on their hostilities with so little rancor or animosity, that war among them is disarmed of half its terrors. Barbarians are strangers to such refinements. They rush into war with impetuosity, and prosecute it with violence. Their sole object is to make their enemies feel the weight of their vengeance; nor does their rage subside until it be satiated. with inflicting on them every possible calamity. It is with such a spirit that the savage tribes in America carry on their petty wars. It was with the same spirit that the more powerful and no less fierce barbarians in the North of Europe and of Asia fell upon the Roman empire.

Wherever they marched, their route was marked with blood. They ravaged or destroyed all around

them. They made no distinction between what was sacred and what was profane. They respected no age, or sex, or rank. What escaped the fury of the first inundation, perished in those which followed it. The most fertile and populous provinces were converted into deserts, in which were scattered the ruins of villages and cities that afforded shelter to a few miserable inhabitants whom chance had preserved, or the sword of the enemy, wearied with destroying, had spared. The conquerors who first settled in the countries which they had wasted, were expelled or exterminated by new invaders, who, coming from regions farther removed from the civilized parts of the world, were still more fierce and rapacious. This brought fresh calamities upon mankind, which did not cease until the North, by pouring forth successive swarms, was drained of people, and could no longer furnish instruments of destruction. Famine and pestilence, which always march in the train of war, when it ravages with such inconsiderate cruelty, raged in every part of Europe, and completed its sufferings. If a man were called to fix upon the period in the history of the world, during which the condition of the human race was most calamitous and afflicted, he would, without hesitation, name that which elapsed from the death of Theodosius the Great to the establishment of the Lombards in Italy.[4] The contemporary authors, who beheld that scene of

[4] Theodosius died A. D. 395; the reign of Alboinus in Lombardy began A. D. 571; so that this period was 176 years.

desolation, labor and are at a loss for expressions to describe the horror of it. *The scourge of God*, *The destroyer of nations*, are the dreadful epithets by which they distinguished the most noted of the barbarous leaders; and they compare the ruin which they had brought on the world, to the havoc occasioned by earthquakes, conflagrations, or deluges, the most formidable and fatal calamities which the imagination of man can conceive.

But no expressions can convey so perfect an idea of the destructive progress of the barbarians, as that which must strike an attentive observer, when he contemplates the total change which he will discover in the state of Europe, after it began to recover some degree of tranquillity, towards the close of the sixth century. The Saxons were by that time masters of the southern and more fertile provinces of Britain; the Franks of Gaul; the Huns of Pannonia; the Goths of Spain; the Goths and Lombards of Italy and the adjacent provinces. Very faint vestiges of the Roman policy, jurisprudence, arts, or literature remained. New forms of government, new laws, new manners, new dresses, new languages, and new names of men and countries, were everywhere introduced. To make a great or sudden alteration with respect to any of these, unless where the ancient inhabitants of a country have been almost totally exterminated, has proved an undertaking beyond the power of the greatest conquerors.[5] The great change which the settle-

[5] Note IV.

ment of the barbarous nations occasioned in the state of Europe, may, therefore, be considered as a more decisive proof, than even the testimony of contemporary historians, of the destructive violence with which these invaders carried on their conquests, and of the havoc which they had made from one extremity of this quarter of the globe to the other.[6]

In the obscurity of the chaos occasioned by this general wreck of nations, we must search for the seeds of order, and endeavor to discover the first rudiments of the policy and laws now established in Europe. To this source the historians of its different kingdoms have attempted, though with less attention and industry than the importance of the inquiry merits, to trace back the institutions and customs peculiar to their countrymen. It is not my province to give a minute detail of the progress of government and manners in each particular nation, whose transactions are the object of the following history. But, in order to exhibit a just view of the state of Europe at the opening of the sixteenth century, it is necessary to look back, and to contemplate the condition of the Northern nations upon their first settlement in those countries which they occupied. It is necessary to mark the great steps by which they advanced from barbarism to refinement, and to point out those general principles and events which, by their uniform as well as extensive operation, conducted all of

[6] Note V.

them to that degree of improvement in policy and in manners which they had attained at the period when Charles V began his reign.

When nations subject to despotic government make conquests, these serve only to extend the dominion and the power of their master. But armies composed of freemen conquer for themselves, not for their leaders. The people who overturned the Roman empire, and settled in its various provinces, were of the latter class. Not only the different nations that issued from the North of Europe, which has always been considered as the seat of liberty, but the Huns and Alans, who inhabited part of those countries which have been marked out as the peculiar region of servitude,[7] enjoyed freedom and independence in such a high degree as seems to be scarcely compatible with a state of social union, or with the subordination necessary to maintain it. They followed the chieftain who led them forth in quest of new settlements, not by constraint, but from choice; not as soldiers whom he could order to march, but as volunteers who offered to accompany him.[8] They considered their conquests as a common property, in which all had a title to share, as all had contributed to acquire them.[9] In what manner, or by what principles, they divided among them the lands which they seized, we cannot now determine with any certainty. There is no nation in Europe whose records reach back to this remote

[7] De l'Esprit des Loix, liv. xvii. ch. 3.

[8] Note VI.

[9] Note VII.

period; and there is little information to be got from uninstructive and meagre chronicles, compiled by writers ignorant of the true end, and unacquainted with the proper objects, of history.

This new division of property, however, together with the maxims and manners to which it gave rise, gradually introduced a species of government formerly unknown. This singular institution is now distinguished by the name of the *feudal system;* and though the barbarous nations which framed it settled in their new territories at different times, came from different countries, spoke various languages, and were under the command of separate leaders, the feudal policy and laws were established, with little variation, in every kingdom of Europe. This amazing uniformity hath induced some authors[10] to believe that all these nations, notwithstanding so many apparent circumstances of distinction, were originally the same people. But it may be ascribed, with greater probability, to the similar state of society and of manners to which they were accustomed in their native countries, and to the similar situation in which they found themselves on taking possession of their new domains.

As the conquerors of Europe had their acquisitions to maintain, not only against such of the ancient inhabitants as they had spared, but against the more formidable inroads of new invaders, self-defence was their chief care, and seems to have

[10] Procop. de Bello Vandal. ap. Script. Byz. edit. Ven. vol. i p. 345.

been the chief object of their first institutions and policy. Instead of those loose associations, which, though they scarcely diminished their personal independence, had been sufficient for their security while they remained in their original countries, they saw the necessity of uniting in more close confederacy, and of relinquishing some of their private rights in order to attain public safety. Every freeman, upon receiving a portion of the lands which were divided, bound himself to appear in arms against the enemies of the community. This military service was the condition upon which he received and held his lands; and as they were exempted from every other burden, that tenure, among a warlike people, was deemed both easy and honorable. The king or general, who led them to conquest, continuing still to be the head of the colony, had, of course, the largest portion allotted to him. Having thus acquired the means of rewarding past services, as well as of gaining new adherents, he parcelled out his lands with this view, binding those on whom they were bestowed to resort to his standard with a number of men in proportion to the extent of the territory which they received, and to bear arms in his defence. His chief officers imitated the example of the sovereign, and, in distributing portions of their lands among their dependents, annexed the same condition to the grant. Thus a feudal kingdom resembled a military establishment, rather than a civil institution. The victorious army, can-

toned out in the country which it had seized, continued ranged under its proper officers, and subordinate to military command. The names of a soldier and of a freeman were synonymous.[11] Every proprietor of land, girt with a sword, was ready to march at the summons of his superior, and to take the field against the common enemy.

But though the feudal policy seems to be so admirably calculated for defence against the assaults of any foreign power, its provisions for the interior order and tranquillity of society were extremely defective. The principles of disorder and corruption are discernible in that constitution under its best and most perfect form. They soon unfolded themselves, and, spreading with rapidity through every part of the system, produced the most fatal effects. The bond of political union was extremely feeble; the sources of anarchy were innumerable. The monarchical and aristocratical parts of the constitution, having no intermediate power to balance them, were perpetually at variance, and justling with each other. The powerful vassals of the crown soon extorted a confirmation for life of those grants of land, which, being at first purely gratuitous, had been bestowed only during pleasure. Not satisfied with this, they prevailed to have them converted into hereditary possessions. One step more completed their usurpations, and rendered them unalienable.[12] With an ambition no less enterprising, and more preposterous, they ap-

[11] Du Cange, Glossar. voc. *Miles.*

[12] Note VIII.

propriated to themselves titles of honor, as well as offices of power or trust. These personal marks of distinction, which the public admiration bestows on illustrious merit, or which the public confidence confers on extraordinary abilities, were annexed to certain families, and transmitted like fiefs, from father to son, by hereditary right. The crown vassals having thus secured the possession of their lands and dignities, the nature of the feudal institutions, which, though founded on subordination, verged to independence, led them to new and still more dangerous encroachments on the prerogatives of the sovereign. They obtained the power of supreme jurisdiction, both civil and criminal, within their own territories; the right of coining money; together with the privilege of carrying on war against their private enemies, in their own name, and by their own authority. The ideas of political subjection were almost entirely lost, and frequently scarce any appearance of feudal subordination remained. Nobles, who had acquired such enormous power, scorned to consider themselves as subjects. They aspired openly at being independent; the bonds which connected the principal members of the constitution with the crown were dissolved. A kingdom, considerable in name and in extent, was broken into as many separate principalities as it contained powerful barons. A thousand causes of jealousy and discord subsisted among them, and gave rise to as many wars. Every country in Europe, wasted or kept in continual alarm during

these endless contests, was filled with castles and places of strength erected for the security of the inhabitants; not against foreign force, but against internal hostilities. An universal anarchy, destructive, in a great measure, of all the advantages which men expect to derive from society, prevailed. The people, the most numerous as well as the most useful part of the community, were either reduced to a state of actual servitude, or treated with the same insolence and rigor as if they had been degraded into that wretched condition.[13] The king, stripped of almost every prerogative, and without authority to enact or to execute salutary laws, could neither protect the innocent nor punish the guilty. The nobles, superior to all restraint, harassed each other with perpetual wars, oppressed their fellow-subjects, and humbled or insulted their sovereign. To crown all, time gradually fixed and rendered venerable this pernicious system, which violence had established.

Such was the state of Europe with respect to the interior administration of government from the seventh to the eleventh century. All the external operations of its various states, during this period, were, of course, extremely feeble. A kingdom dismembered, and torn with dissension, without any common interest to rouse, or any common head to conduct its force, was incapable of acting with vigor. Almost all the wars in Europe, during the ages which I have mentioned, were trifling, indecisive,

[13] Note IX.

and productive of no considerable event. They resembled the short incursions of pirates or banditti, rather than the steady operations of a regular army. Every baron, at the head of his vassals, carried on some petty enterprise, to which he was prompted by his own ambition or revenge. The state itself, destitute of union, either remained altogether inactive, or, if it attempted to make any effort, that served only to discover its impotence. The superior genius of Charlemagne, it is true, united all these disjointed and discordant members, and formed them again into one body, restored to government that degree of activity which distinguishes his reign, and renders the transactions of it objects not only of attention, but of admiration, to more enlightened times. But this state of union and vigor, not being natural to the feudal government, was of short duration. Immediately upon his death, the spirit which animated and sustained the vast system which he had established being withdrawn, it broke into pieces. All the calamities which flow from anarchy and discord, returning with additional force, afflicted the different kingdoms into which his empire was split. From that time to the eleventh century, a succession of uninteresting events, a series of wars, the motives as well as the consequences of which were unimportant, fill and deform the annals of all the nations in Europe.

To these pernicious effects of the feudal anarchy may be added its fatal influence on the character and improvement of the human mind. If men do

not enjoy the protection of regular government, together with the expectation of personal security, which naturally flows from it, they never attempt to make progress in science, nor aim at attaining refinement in taste, or in manners. That period of turbulence, oppression, and rapine, which I have described, was ill suited to favor improvement in any of these. In less than a century after the barbarous nations settled in their new conquests, almost all the effects of the knowledge and civility which the Romans had spread through Europe disappeared. Not only the arts of elegance, which minister to luxury, and are supported by it, but many of the useful arts, without which life can scarcely be considered as comfortable, were neglected or lost. Literature, science, taste, were words little in use during the ages which we are contemplating; or, if they occur at any time, eminence in them is ascribed to persons and productions so contemptible, that it appears their true import was little understood. Persons of the highest rank, and in the most eminent stations, could not read or write. Many of the clergy did not understand the breviary which they were obliged daily to recite; some of them could scarcely read it.[14] The memory of past transactions was, in a great degree, lost, or preserved in annals filled with trifling events, or legendary tales. Even the codes of laws, published by the several nations which established themselves in the different countries of Europe, fell into disuse, while,

[14] Note X.

in their place, customs, vague and capricious, were substituted. The human mind, neglected, uncultivated, and depressed, continued in the most profound ignorance. Europe, during four centuries, produced few authors who merit to be read, either on account of the elegance of their composition, or the justness and novelty of their sentiments. There are few inventions useful or ornamental to society, of which that long period can boast.

Even the Christian religion, though its precepts are delivered, and its institutions are fixed in Scripture, with a precision which should have exempted them from being misinterpreted or corrupted, degenerated, during those ages of darkness, into an illiberal superstition. The barbarous nations, when converted to Christianity, changed the object, not the spirit, of their religious worship. They endeavored to conciliate the favor of the true God by means not unlike to those which they had employed in order to appease their false deities. Instead of aspiring to sanctity and virtue, which alone can render men acceptable to the great Author of order and of excellence, they imagined that they satisfied every obligation of duty by a scrupulous observance of external ceremonies.[15] Religion, according to their conceptions of it, comprehended nothing else; and the rites, by which they persuaded themselves that they could gain the favor of Heaven, were of such a nature as might have been expected from the rude ideas of the ages

[15] Note XI.

which devised and introduced them. They were either so unmeaning as to be altogether unworthy of the Being to whose honor they were consecrated; or so absurd as to be a disgrace to reason and humanity.[16] Charlemagne in France, and Alfred the Great in England, endeavored to dispel this darkness, and gave their subjects a short glimpse of light and knowledge. But the ignorance of the age was too powerful for their efforts and institutions. The darkness returned, and settled over Europe more thick and heavy than before.

As the inhabitants of Europe, during these centuries, were strangers to the arts which embellish a polished age, they were destitute of the virtues which abound among people who continue in a simple state. Force of mind, a sense of personal dignity, gallantry in enterprise, invincible perseverance in execution, contempt of danger and of death, are the characteristic virtues of uncivilized nations. But these are all the offspring of equality and independence, both which the feudal institutions had destroyed. The spirit of domination corrupted the nobles, the yoke of servitude depressed the people, the generous sentiments inspired by a sense of equality were extinguished, and hardly anything remained to be a check on ferocity and violence. Human society is in its most corrupted state at that period when men have lost their original independence and simplicity of manners, but have not attained that degree of refinement which

[16] Note XII.

introduces a sense of decorum and of propriety in conduct, as a restraint on those passions which lead to heinous crimes. Accordingly, a greater number of those atrocious actions, which fill the mind of man with astonishment and horror, occur in the history of the centuries under review, than in that of any period of the same extent in the annals of Europe. If we open the history of Gregory of Tours, or of any contemporary author, we meet with a series of deeds of cruelty, perfidy, and revenge, so wild and enormous as almost to exceed belief.

But, according to the observation of an elegant and profound historian,[17] there is an ultimate point of depression, as well as of exaltation, from which human affairs naturally return in a contrary process, and beyond which they never pass either in their advancement or decline. When defects, either in the form or in the administration of government, occasion such disorders in society as are excessive and intolerable, it becomes the common interest to discover and to apply such remedies as will most effectually remove them. Slight inconveniences may be long overlooked or endured; but when abuses grow to a certain pitch, the society must go to ruin, or must attempt to reform them. The disorders in the feudal system, together with the corruption of taste and manners consequent upon these, which had gone on increasing during a long course of years, seemed to have attained their utmost point

[17] Hume's History of England, vol. ii. p. 441.

of excess towards the close of the eleventh century. From that era, we may date the return of government and manners in a contrary direction, and can trace a succession of causes and events which contributed, some with a nearer and more conspicuous, others with a more remote and less perceptible influence, to abolish confusion and barbarism, and to introduce order, regularity, and refinement.

In pointing out and explaining these causes and events, it is not necessary to observe the order of time with a chronological accuracy; it is of more importance to keep in view their mutual connection and dependence, and to show how the operation of one event, or one cause, prepared the way for another, and augmented its influence. We have hitherto been contemplating the progress of that darkness, which spread over Europe, from its first approach, to the period of greatest obscuration; a more pleasant exercise begins here; to observe the first dawnings of returning light, to mark the various accessions by which it gradually increased and advanced towards the full splendor of day.

I. The crusades, or expeditions in order to rescue the Holy Land out of the hands of infidels, seemed to be the first event that roused Europe from the lethargy in which it had been long sunk, and that tended to introduce any considerable change in government or in manners. It is natural to the human mind to view those places which have been distinguished by being the residence of any illustrious personage, or the scene of any great transaction,

with some degree of delight and veneration. To this principle must be ascribed the superstitious devotion with which Christians, from the earliest ages of the Church, were accustomed to visit that country which the Almighty had selected as the inheritance of his favorite people, and in which the Son of God had accomplished the redemption of mankind. As this distant pilgrimage could not be performed without considerable expense, fatigue, and danger, it appeared the more meritorious, and came to be considered as an expiation for almost every crime. An opinion which spread with rapidity over Europe about the close of the tenth, and beginning of the eleventh century, and which gained universal credit, wonderfully augmented the number of credulous pilgrims, and increased the ardor with which they undertook this useless voyage. The thousand years, mentioned by St. John,[18] were supposed to be accomplished, and the end of the world to be at hand. A general consternation seized mankind; many relinquished their possessions, and, abandoning their friends and families, hurried with precipitation to the Holy Land, where they imagined that Christ would quickly appear to judge the world.[19] While Palestine continued subject to the Caliphs, they had encouraged the resort of pilgrims to Jerusalem;

[18] Revel. xx. 2, 3, 4.

[19] Chronic. Will. Godelli ap. Bouquet, Recueil des Historiens de France, tom. x. p. 262. Vita Abonis, ibid. p. 332. Chronic. S. Pantaleonis ap. Eccard. Corp. Scrip. Medii Ævi, vol. i. p. 909. Annalista Saxo, ibid. 576.

and considered this as a beneficial species of commerce, which brought into their dominions gold and silver, and carried nothing out of them but relics and consecrated trinkets. But the Turks having conquered Syria about the middle of the eleventh century, pilgrims were exposed to outrages of every kind from these fierce barbarians.[20] This change, happening precisely at the juncture when the panic terror which I have mentioned rendered pilgrimages most frequent, filled Europe with alarm and indignation. Every person who returned from Palestine related the dangers which he had encountered in visiting the holy city, and described with exaggeration the cruelty and vexations of the Turks.

When the minds of men were thus prepared, the zeal of a fanatical monk, who conceived the idea of leading all the forces of Christendom against the infidels, and of driving them out of the Holy Land by violence, was sufficient to give a beginning to that wild enterprise. Peter the Hermit, for that was the name of this martial apostle, ran from province to province with a crucifix in his hand, exciting princes and people to this holy war, and wherever he came kindled the same enthusiastic ardor for it with which he himself was animated. The Council of Placentia, where upwards of thirty thousand persons were assembled, pronounced the scheme to have been suggested by the immediate inspiration of Heaven. In the Council of Clermont, still more

[20] Jo. Dan. Schoepflini de sacris Gallorum in Orientem Expeditionibus, p. 4, Argent. 1726, 4to.

numerous, as soon as the measure was proposed, all cried out with one voice, "It is the will of God." Persons of all ranks catched the contagion; not only the gallant nobles of that age, with their martial followers, whom we may suppose apt to be allured by the boldness of a romantic enterprise, but men in the more humble and pacific stations of life; ecclesiastics of every order, and even women and children, engaged with emulation in an undertaking which was deemed sacred and meritorious. If we may believe the concurring testimony of contemporary authors, six millions of persons assumed the cross,[21] which was the badge that distinguished such as devoted themselves to this holy warfare. All Europe, says the princess Anna Comnena, torn up from the foundation, seemed ready to precipitate itself in one united body upon Asia.[22] Nor did the fumes of this enthusiastic zeal evaporate at once; the frenzy was as lasting as it was extravagant. During two centuries Europe seems to have had no object but to recover, or keep possession of, the Holy Land; and through that period vast armies continued to march thither.[23]

The first efforts of valor, animated by enthusiasm, were irresistible; part of the lesser Asia, all Syria, and Palestine, were wrested from the infidels; the banner of the cross was displayed on Mount Sion;

[21] Fulcherius Carnotensis ap. Bongarsii Gesta Dei per Francos, vol i. 387, edit. Han. 1611.

[22] Alexias, lib. x. ap. Byz. Script. vol. xi. p. 224.

[23] Note XIII.

Constantinople, the capital of the Christian empire in the East, was afterwards seized by a body of those adventurers who had taken arms against the Mahometans; and an earl of Flanders, and his descendants, kept possession of the imperial throne during half a century. But though the first impression of the crusaders was so unexpected that they made their conquests with great ease, they found infinite difficulty in preserving them. Establishments so distant from Europe, surrounded by warlike nations, animated with fanatical zeal scarcely inferior to that of the crusaders themselves, were perpetually in danger of being overturned. Before the expiration of the thirteenth century, the Christians were driven out of all their Asiatic posses sions, in acquiring of which incredible numbers of men had perished, and immense sums of money had been wasted. The only common enterprise in which the European nations ever engaged, and which they all undertook with equal ardor, remains a singular monument of human folly.

But from these expeditions, extravagant as they were, beneficial consequences followed, which had neither been foreseen nor expected. In their progress towards the Holy Land, the followers of the cross marched through countries better cultivated and more civilized than their own. Their first rendezvous was commonly in Italy, in which Venice, Genoa, Pisa, and other cities, had begun to apply themselves to commerce, and had made considerable advances towards wealth as well as refinement.

They embarked there, and, landing in Dalmatia, pursued their route by land to Constantinople. Though the military spirit had been long extinct in the Eastern empire, and a despotism of the worst species had annihilated almost every public virtue, yet Constantinople, having never felt the destructive rage of the barbarous nations, was the greatest, as well as the most beautiful city in Europe, and the only one in which there remained any image of the ancient elegance in manners and arts. The naval power of the Eastern empire was considerable. Manufactures of the most curious fabric were carried on in its dominions. Constantinople was the chief mart in Europe for the commodities of the East Indies. Although the Saracens and Turks had torn from the empire many of its richest provinces, and had reduced it within very narrow bounds, yet great wealth flowed into the capital from these various sources, which not only cherished such a taste for magnificence, but kept alive such a relish for the sciences, as appears considerable, when compared with what was known in other parts of Europe. Even in Asia, the Europeans who had assumed the cross found the remains of the knowledge and arts which the example and encouragement of the Caliphs had diffused through their empire. Although the attention of the historians of the crusades was fixed on other objects than the state of society and manners among the nations which they invaded; although most of them had neither taste nor discernment enough to describe

these, they relate, however, such signal acts of humanity and generosity in the conduct of Saladin, as well as some other leaders of the Mahometans, as give us a very high idea of their manners. It was not possible for the crusaders to travel through so many countries, and to behold their various customs and institutions, without acquiring information and improvement. Their views enlarged; their prejudices wore off; new ideas crowded into their minds; and they must have been sensible, on many occasions, of the rusticity of their own manners when compared with those of a more polished people. These impressions were not so slight as to be effaced upon their return to their native countries. A close intercourse subsisted between the East and West during two centuries; new armies were continually marching from Europe to Asia, while former adventurers returned home, and imported many of the customs to which they had been familiarized by a long residence abroad. Accordingly we discover, soon after the commencement of the crusades, greater splendor in the courts of princes, greater pomp in public ceremonies, a more refined taste in pleasure and amusements, together with a more romantic spirit of enterprise, spreading gradually over Europe; and to these wild expeditions, the effect of superstition or folly, we owe the first gleams of light which tended to dispel barbarism and ignorance.

But these beneficial consequences of the crusades took place slowly; their influence upon the state of property, and consequently of power, in the different

kingdoms of Europe, was more immediate, as well as discernible. The nobles who assumed the cross, and bound themselves to march to the Holy Land, soon perceived that great sums were necessary towards defraying the expense of such a distant expedition, and enabling them to appear with suitable dignity at the head of their vassals. But the genius of the feudal system was averse to the imposition of extraordinary taxes; and subjects in that age were unaccustomed to pay them. No expedient remained for levying the sums requisite, but the sale of their possessions. As men were inflamed with romantic expectations of the splendid conquests which they hoped to make in Asia, and possessed with such zeal for recovering the Holy Land as swallowed up every other passion, they relinquished their ancient inheritances without any reluctance, and for prices far below their value, that they might sally forth as adventurers in quest of new settlements in unknown countries. The monarchs of the great kingdoms in the West, none of whom had engaged in the first crusade, eagerly seized this opportunity of annexing considerable territories to their crowns at small expense.[24] Besides this, several great barons, who perished in the holy war, having left no heirs, their fiefs reverted of course to their respective sovereigns; and by these accessions of property, as well as power taken from the one scale and thrown into the other, the regal authority rose in proportion as that of the aristocracy declined. The absence, too,

24 Wilhelm. Malmsbur. Guibert. Abbas ap. Bongars. vol. i. 481.

of many potent vassals, accustomed to control and give law to their sovereigns, afforded them an opportunity of extending their prerogative, and of acquiring a degree of weight in the constitution which they did not formerly possess. To these circumstances we may add, that, as all who assumed the cross were taken under the immediate protection of the Church, and its heaviest anathemas were denounced against such as should disquiet or annoy those who had devoted themselves to this service, the private quarrels and hostilities which banished tranquillity from a feudal kingdom were suspended or extinguished; a more general and steady administration of justice began to be introduced, and some advances were made towards the establishment of regular government in the several kingdoms of Europe.[25]

The commercial effects of the crusades were not less considerable than those which I have already mentioned. The first armies under the standard of the cross, which Peter the Hermit and Godfrey of Bouillon led through Germany and Hungary to Constantinople, suffered so much by the length of the march, as well as by the fierceness of the barbarous people who inhabited those countries, that it deterred others from taking the same route; and, rather than encounter so many dangers, they chose to go by sea. Venice, Genoa, and Pisa furnished the transports on which they embarked. The sum

[25] Du Cange, Glossar. voc. *Cruce signatus.* Guib. Abbas ap. Bongars. vol. i. 480, 482. See also Note XIV.

which these cities received merely for freight from such numerous armies was immense.[26] This, however, was but a small part of what they gained by the expeditions to the Holy Land; the crusaders contracted with them for military stores and provisions; their fleets kept on the coast as the armies advanced by land; and, supplying them with whatever was wanting, engrossed all the profits of a branch of commerce which, in every age, has been extremely lucrative. The success which attended the arms of the crusaders was productive of advantages still more permanent. There are charters yet extant, containing grants to the Venetians, Pisans, and Genoese, of the most extensive immunities in the several settlements which the Christians made in Asia. All the commodities which they imported or exported are thereby exempted from every imposition; the property of entire suburbs in some of the maritime towns, and of large streets in others, is vested in them; and all questions arising among persons settled within their precincts, or who traded under their protection, are appointed to be tried by their own laws, and by judges of their own appointment.[27] When the crusaders seized Constantinople, and placed one of their own leaders on the imperial throne, the Italian states were likewise gainers by that event. The Venetians, who had planned the enterprise, and took a considerable part in carrying it into execution, did not neglect to secure to them-

[26] Muratori, Antiquit. Italic. Medii Ævi, vol. ii. 905.

[27] Ibid., 906, &c.

selves the chief advantages redounding from its success. They made themselves masters of part of the ancient Peloponnesus in Greece, together with some of the most fertile islands in the Archipelago. Many valuable branches of the commerce which formerly centred in Constantinople, were transferred to Venice, Genoa, or Pisa. Thus a succession of events, occasioned by the holy war, opened various sources from which wealth flowed in such abundance into these cities,[28] as enabled them, in concurrence with another institution, which shall be immediately mentioned, to secure their own liberty and independence.

II. The institution to which I alluded was the forming of cities into communities, corporations, or bodies politic, and granting them the privilege of municipal jurisdiction, which contributed more, perhaps, than any other cause, to introduce regular government, police, and arts, and to diffuse them over Europe. The feudal government had degenerated into a system of oppression. The usurpations of the nobles were become unbounded and intolerable; they had reduced the great body of the people into a state of actual servitude: the condition of those dignified with the name of freemen was often little preferable to that of the other. Nor was such oppression the portion of those alone who dwelt in the country, and were employed in cultivating the estate of their master. Cities and

[28] Villehardouin, Histoire de Constant. sous l'Empereurs François, 105, &c.

villages found it necessary to hold of some great lord, on whom they might depend for protection, and become no less subject to his arbitrary jurisdiction. The inhabitants were deprived of those rights which, in social life, are deemed most natural and inalienable. They could not dispose of the effects which their own industry had acquired, either by a latter will, or by any deed executed during their life.[29] They had no right to appoint guardians for their children during their minority. They were not permitted to marry without purchasing the consent of the lord on whom they depended.[30] If once they had commenced a lawsuit, they durst not terminate it by an accommodation, because that would have deprived the lord, in whose court they pleaded, of the perquisites due to him on passing sentence.[31] Services of various kinds, no less disgraceful than oppressive, were exacted from them without mercy or moderation. The spirit of industry was checked in some cities by absurd regulations, and in others by unreasonable exactions; nor would the narrow and oppressive maxims of a military aristocracy have permitted it ever to rise to any degree of height or vigor.[32]

But as soon as the cities of Italy began to turn their attention towards commerce, and to conceive

[29] Dacherii Spiceleg. tom. xi. 374, 375, edit. in 4to. Ordonnances des Rois de France, tom. iii. 204. No. 2, 6.

[30] Ordonnances des Rois de France, tom. i. p. 22, tom. iii. 203. No. 1 Murat. Antiq. Ital. vol. iv. p. 20. Dacher. Spicel. vol. ix. 325, 341.

[31] Dacher. Spicel. vol. ix. 182.

[32] M. l'Abbé Mably, Observat. sur l'Hist. de France, tom. ii. pp. 2, 96

some idea of the advantages which they might derive from it, they became impatient to shake off the yoke of their insolent lords, and to establish among themselves such a free and equal government, as would render property secure, and industry flourishing. The German emperors, especially those of the Franconian and Suabian lines, as the seat of their government was far distant from Italy, possessed a feeble and imperfect jurisdiction in that country. Their perpetual quarrels, either with the popes or with their own turbulent vassals, diverted their attention from the interior police of Italy, and gave constant employment to their arms. These circumstances encouraged the inhabitants of some of the Italian cities, towards the beginning of the eleventh century, to assume new privileges, to unite together more closely, and to form themselves into bodies politic under the government of laws established by common consent.[33] The rights which many cities acquired by bold or fortunate usurpations, others purchased from the emperors, who deemed themselves gainers when they received large sums for immunities which they were no longer able to withhold; and some cities obtained them gratuitously, from the generosity or facility of the princes on whom they depended. The great increase of wealth which the crusades brought into Italy, occasioned a new kind of fermentation and activity in the minds of the people, and excited such a general passion for liberty and indepen-

[33] Murat. Antiq. Ital. vol. iv. p. 5.

dence, that, before the conclusion of the last crusade, all the considerable cities in that country had either purchased or had extorted large immunities from the emperors.[34]

This innovation was not long known in Italy before it made its way into France. Louis le Gros, in order to create some power that might counterbalance those potent vassals who controlled or gave law to the crown, first adopted the plan of conferring new privileges on the towns situated within its own domain. These privileges were called *charters of community*, by which he enfranchised the inhabitants, abolished all marks of servitude, and formed them into corporations or bodies politic, to be governed by a council and magistrates of their own nomination. These magistrates had the right of administering justice within their own precincts, of levying taxes, of embodying and training to arms the militia of the town, which took the field when required by the sovereign, under the command of officers appointed by the community. The great barons imitated the example of their monarch, and granted like immunities to the towns within their territories. They had wasted such great sums in their expeditions to the Holy Land, that they were eager to lay hold on this new expedient for raising money, by the sale of those charters of liberty. Though the institution of communities was as repugnant to their maxims of policy, as it was adverse to their power, they

[34] Note XV.

disregarded remote consequences, in order to obtain present relief. In less than two centuries, servitude was abolished in most of the towns in France, and they became free corporations, instead of dependent villages, without jurisdiction or privileges.[35] Much about the same period, the great cities in Germany began to acquire like immunities, and laid the foundation of their present liberty and independence.[36] The practice spread quickly over Europe, and was adopted in Spain, England, Scotland, and all the other feudal kingdoms.[37]

The good effects of this new institution were immediately felt, and its influence on government as well as manners was no less extensive than salutary. A great body of the people was released from servitude, and from all the arbitrary and grievous impositions to which that wretched condition had subjected them. Towns, upon acquiring the right of community, became so many little republics, governed by known and equal laws. Liberty was deemed such an essential and characteristic part in their constitution, that if any slave took refuge in one of them, and resided there during a year without being claimed, he was instantly declared a freeman, and admitted as a member of the community.[38]

As one part of the people owed their liberty to

[35] Note XVI. [36] Note XVII. [37] Note XVIII.

[38] Statut. Humberti Bellojoci, Dacher. Spicel. vol. ix. 182, 185. Charta Comit. Forens. ibid. 193.

the erection of communities, another was indebted to them for their security. Such had been the state of Europe during several centuries, that self-preservation obliged every man to court the patronage of some powerful baron, and in times of danger his castle was the place to which all resorted for safety. But towns surrounded with walls, whose inhabitants were regularly trained to arms, and bound by interest, as well as by the most solemn engagements, reciprocally to defend each other, afforded a more commodious and secure retreat. The nobles began to be considered as of less importance when they ceased to be the sole guardians to whom the people could look up for protection against violence.

If the nobility suffered some diminution of their credit and power by the privileges granted to the cities, the crown acquired an increase of both. As there were no regular troops kept on foot in any of the feudal kingdoms, the monarch could bring no army into the field, but what was composed of soldiers furnished by the crown vassals, always jealous of the regal authority; nor had he any funds for carrying on the public service but such as they granted him with a very sparing hand. But when the members of communities were permitted to bear arms, and were trained to the use of them, this in some degree supplied the first defect, and gave the crown the command of a body of men, independent of its great vassals. The attachment of the cities to their sovereigns, whom they respected as the first authors of their liberties, and whom they were

obliged to court as the protectors of their immunities against the domineering spirit of the nobles, contributed somewhat towards removing the second evil, as, on many occasions, it procured the crown supplies of money, which added new force to government.[39]

The acquisition of liberty made such a happy change in the condition of all the members of communities, as roused them from that inaction into which they had been sunk by the wretchedness of their former state. The spirit of industry revived. Commerce became an object of attention, and began to flourish. Population increased. Independence was established; and wealth flowed into cities which had long been the seat of poverty and oppression. Wealth was accompanied by its usual attendants, ostentation and luxury; and though the former was formal and cumbersome, and the latter inelegant, they led gradually to greater refinement in manners, and in the habits of life. Together with this improvement in manners, a more regular species of government and police was introduced. As cities grew to be more populous, and the occasions of intercourse among men increased, statutes and regulations multiplied of course, and all became sensible that their common safety depended on observing them with exactness, and on punishing such as violated them with promptitude and rigor. Laws and subordination, as well as polished manners, taking their rise in cities, dif-

[39] Ordon. des Rois de France, tom. i. 602, 785; tom. ii. 318, 422.

fused themselves insensibly through the rest of the society.

III. The inhabitants of cities, having obtained personal freedom and municipal jurisdiction, soon acquired civil liberty and political power. It was a fundamental principle in the feudal system of policy, that no freeman could be subjected to new laws or taxes unless by his own consent. In consequence of this, the vassals of every baron were called to his court, in which they established, by mutual consent, such regulations as they deemed most beneficial to their small society, and granted their superior such supplies of money as were proportioned to their abilities, or to his wants. The barons themselves, conformably to the same maxim, were admitted into the supreme assembly of the nation, and concurred with the sovereign in enacting laws, or in imposing taxes. As the superior lord, according to the original plan of feudal policy, retained the direct property of those lands which he granted in temporary possession to his vassals, the law, even after fiefs became hereditary, still supposed this original practice to subsist. The great council of each nation, whether distinguished by the name of a parliament, a diet, the cortes, or the states-general, was composed entirely of such barons and dignified ecclesiastics, as held immediately of the crown. Towns, whether situated within the royal domain or on the lands of a subject, depended originally for protection on the lord of whom they held. They had no legal name, no political existence, which could entitle

them to be admitted into the legislative assembly, or could give them any authority there. But as soon as they were enfranchised, and formed into bodies corporate, they became legal and independent members of the constitution, and acquired all the rights essential to freemen. Amongst these, the most valuable was the privilege of a decisive voice in enacting public laws, and granting national subsidies. It was natural for cities, accustomed to a form of municipal government according to which no regulation could be established within the community, and no money could be raised, but by their own consent, to claim this privilege. The wealth, the power, and consideration which they acquired on recovering their liberty, added weight to their claim; and favorable events happened, or fortunate conjunctures occurred, in the different kingdoms of Europe, which facilitated their obtaining possession of this important right. In England, one of the first countries in which the representatives of boroughs were admitted into the great council of the nation, the barons who took arms against Henry III. summoned them to attend parliament, in order to add greater popularity to their party, and to strengthen the barrier against the encroachment of regal power. In France, Philip the Fair, a monarch no less sagacious than enterprising, considered them as instruments which might be employed with equal advantage to extend the royal prerogative, to counterbalance the exorbitant power of the nobles, and to facilitate the imposition of new taxes. With these

views, he introduced the deputies of such towns as were formed into communities into the states-general of the nation.[40] In the empire, the wealth and immunities of the imperial cities placed them on a level with the most considerable members of the Germanic body. Conscious of their own power and dignity, they pretended to the privilege of forming a separate bench in the diet; and made good their pretensions.[41] [1293.]

But in what way soever the representatives of cities first gained a place in the legislature, that event had great influence on the form and genius of government. It tempered the rigor of aristocratical oppression with a proper mixture of popular liberty: it secured to the great body of the people, who had formerly no representatives, active and powerful guardians of their rights and privileges: it established an intermediate power between the king and the nobles, to which each had recourse alternately, and which at some times opposed the usurpations of the former, on other occasions checked the encroachments of the latter. As soon as the representatives of communities gained any degree of credit and influence in the legislature, the spirit of laws became different from what it had formerly been; it flowed from new principles; it was directed towards new objects; equality, order, the public good, and the redress of grievances, were phrases and ideas brought into use, and

[40] Pasquier, Recherches de la France, ap. 81, edit. Par. 1633.

[41] Pfeffel, Abrégé de l'Histoire et Droit d'Allemagne, pp. 408, 451.

which grew to be familiar in the statutes and jurisprudence of the European nations. Almost all the efforts in favor of liberty in every country of Europe have been made by this new power in the legislature. In proportion as it rose to consideration and influence, the severity of the aristocratical spirit decreased; and the privileges of the people became gradually more extensive, as the ancient and exorbitant jurisdiction of the nobles was abridged.[42]

IV The inhabitants of towns having been declared free by the charters of communities, that part of the people which resided in the country, and was employed in agriculture, began to recover liberty by enfranchisement. During the rigor of feudal government, as hath been already observed, the great body of the lower people was reduced to servitude. They were slaves fixed to the soil which they cultivated, and together with it were transferred from one proprietor to another, by sale or by conveyance. The spirit of feudal policy did not favor the enfranchisement of that order of men. It was an established maxim, that no vassal could legally diminish the value of a fief, to the detriment of the lord from whom he had received it. In consequence of this, manumission by the authority of the immediate master was not valid; and unless it was confirmed by the superior lord of whom he held, slaves belonging to the fief did not acquire a complete right to their liberty. Thus it

[42] Note XIX.

became necessary to ascend through all the gradations of feudal holding to the king, the lord paramount.[43] A form of procedure so tedious and troublesome discouraged the practice of manumission. Domestic or personal slaves often obtained liberty from the humanity or beneficence of their masters, to whom they belonged in absolute property. The condition of slaves fixed to the soil was much more unalterable.

But the freedom and independence which one part of the people had obtained by the institution of communities, inspired the other with the most ardent desire of acquiring the same privileges; and their superiors, sensible of the various advantages which they had derived from their former concessions to their dependents, were less unwilling to gratify them by the grant of new immunities. The enfranchisement of slaves became more frequent; and the monarchs of France, prompted by necessity no less than by their inclination to reduce the power of the nobles, endeavored to render it general. Louis X. and Philip the Long issued ordinances, declaring, "that as all men were by nature free born, and as their kingdom was called the kingdom of Franks, they determined that it should be so in reality as well as in name; therefore they appointed that enfranchisements should be granted throughout the whole kingdom, upon just and reasonable conditions."[44] These edicts were car-

[43] Establissements de St. Louis, liv. ii. ch. 34. Ordon. tom. i. 283, note (a).

[44] Ordon. tom. i. pp. 583, 653.

ried into immediate execution within the royal domain. The example of their sovereigns, together with the expectation of considerable sums which they might raise by this expedient, led many of the nobles to set their dependents at liberty; and servitude was gradually abolished in almost every province of the kingdom.[45] In Italy, the establishment of republican government in their great cities, the genius and maxims of which were extremely different from those of the feudal policy, together with the ideas of equality, which the progress of commerce had rendered familiar, gradually introduced the practice of enfranchising the ancient *predial* slaves. In some provinces of Germany, the persons who had been subject to this species of bondage were released; in others, the rigor of their state was mitigated. In England, as the spirit of liberty gained ground, the very name and idea of personal servitude, without any formal interposition of the legislature to prohibit it, was totally banished.

The effects of such a remarkable change in the condition of so great a part of the people, could not fail of being considerable and extensive. The husbandman, master of his own industry, and secure of reaping for himself the fruits of his labor, became the farmer of the same fields where he had formerly been compelled to toil for the benefit of another. The odious names of master and of slave, the most mortifying and depressing

[45] Note XX.

of all distinctions to human nature, were abolished. New prospects opened, and new incitements to ingenuity and enterprise presented themselves to those who were emancipated. The expectation of bettering their fortune, as well as that of raising themselves to a more honorable condition, concurred in calling forth their activity and genius; and a numerous class of men, who formerly had no political existence, and were employed merely as instruments of labor, became useful citizens, and contributed towards augmenting the force or riches of the society which adopted them as members.

V The various expedients which were employed in order to introduce a more regular, equal, and vigorous administration of justice, contributed greatly towards the improvement of society. What were the particular modes of dispensing justice, in their several countries, among the various barbarous nations which overran the Roman empire, and took possession of its different provinces, cannot now be determined with certainty. We may conclude, from the form of government established among them, as well as from their ideas concerning the nature of society, that the authority of the magistrate was extremely limited, and the independence of individuals proportionally great. History and records, as far as these reach back, justify this conclusion, and represent the ideas and exercise of justice in all the countries of Europe as little different from those which must take place in the most simple state of civil life. To maintain the

order and tranquillity of society by the regular execution of known laws; to inflict vengeance on crimes destructive of the peace and safety of individuals, by a prosecution carried on in the name and by the authority of the community; to consider the punishment of criminals as a public example to deter others from violating the laws, — were objects of government little understood in theory, and less regarded in practice. The magistrate could hardly be said to hold the sword of justice; it was left in the hands of private persons. Resentment was almost the sole motive for prosecuting crimes; and to gratify that passion was considered as the chief end in punishing them. He who suffered the wrong, was the only person who had a right to pursue the aggressor, and to exact or to remit the punishment. From a system of judicial procedure so crude and defective, that it seems to be scarcely compatible with the subsistence of civil society, disorder and anarchy flowed. Superstition concurred with this ignorance concerning the nature of government, in obstructing the administration of justice, or in rendering it capricious and unequal. To provide remedies for these evils, so as to give a more regular course to justice, was, during several centuries, one great object of political wisdom. The regulations for this purpose may be reduced to three general heads; to explain these, and to point out the manner in which they operated, is an important article in the history of society among the nations of Europe.

1. The first considerable step towards establishing an equal administration of justice, was the abolishment of the right which individuals claimed of waging war with each other, in their own name, and by their own authority. To repel injuries, and to revenge wrongs, is no less natural to man than to cultivate friendship; and while society remains in its most simple state, the former is considered as a personal right, no less unalienable than the latter. Nor do men in this situation deem that they have a title to redress their own wrongs alone; they are touched with the injuries done to those with whom they are connected, or in whose honor they are interested, and are no less prompt to avenge them. The savage, how imperfectly soever he may comprehend the principles of political union, feels warmly the sentiments of social affection, and the obligations arising from the ties of blood. On the appearance of an injury or affront offered to his family or tribe, he kindles into rage, and pursues the authors of it with the keenest resentment. He considers it as cowardly to expect redress from any arm but his own, and as infamous to give up to another the right of determining what reparation he should accept, or with what vengeance he should rest satisfied.

The maxims and practice of all uncivilized nations, with respect to the prosecution and punishment of offenders, particularly those of the ancient Germans, and other barbarians who invaded the Roman em-

pire, are perfectly conformable to these ideas.[46] While they retained their native simplicity of manners, and continued to be divided into small tribes or societies, the defects in this imperfect system of criminal jurisprudence (if it merits that name) were less sensibly felt. When they came to settle in the extensive provinces which they had conquered, and to form themselves into great monarchies; when new objects of ambition presenting themselves, increased both the number and the violence of their dissensions, they ought to have adopted new maxims concerning the redress of injuries, and to have regulated, by general and equal laws, that which they formerly left to be directed by the caprice of private passion. But fierce and haughty chieftains, accustomed to avenge themselves on such as had injured them, did not think of relinquishing a right which they considered as a privilege of their order, and a mark of their independence. Laws enforced by the authority of princes and magistrates, who possessed little power, commanded no great degree of reverence. The administration of justice among rude, illiterate people was not so accurate, or decisive, or uniform, as to induce men to submit implicitly to its determinations. Every offended baron buckled on his armor, and sought redress at the head of his vassals. His adversary met him in like hostile array. Neither of them appealed to impotent laws, which could afford them no protection; neither of them would submit points, in which their

[46] Tacit. de Mor. German. cap. 21. Vell. Paterc. lib. ii. c. 118.

honor and their passions were warmly interested, to the slow determination of a judicial inquiry. Both trusted to their swords for the decision of the contest. The kindred and dependents of the aggressor, as well as the defender, were involved in the quarrel. They had not even the liberty of remaining neutral. Such as refused to act in concert with the party to which they belonged, were not only exposed to infamy, but subjected to legal penalties.

The different kingdoms of Europe were torn and afflicted, during several centuries, by intestine wars, excited by private animosities, and carried on with all the rage natural to men of fierce manners, and of violent passions. The estate of every baron was a kind of independent territory, disjoined from those around it, and the hostilities between them seldom ceased. The evil became so inveterate and deep-rooted, that the form and laws of private war were ascertained, and regulations concerning it made a part in the system of jurisprudence,[47] in the same manner as if this practice had been founded in some natural right of humanity, or in the original constitution of civil society.

So great was the disorder, and such the calamities, which these perpetual hostilities occasioned, that various efforts were made to wrest from the nobles this pernicious privilege. It was the interest of every sovereign to abolish a practice which almost annihilated his authority. Charlemagne prohibited

[47] Beaumanoir, Coustumes de Beauvoisis, ch. 59, et les notes de Thaumassière, p. 447.

it by an express law, as an invention of the Devil to destroy the order and happiness of society;[48] but the reign of one monarch, however vigorous and active, was too short to extirpate a custom so firmly established. Instead of enforcing this prohibition, his feeble successors durst venture on nothing more than to apply palliatives. They declared it unlawful for any person to commence war, until he had sent a formal defiance to the kindred and dependents of his adversary; they ordained that, after the commission of the trespass or crime which gave rise to a private war, forty days must elapse before the person injured should attack the vassals of his adversary; they enjoined all persons to suspend their private animosities, and to cease from hostilities, when the king was engaged in any war against the enemies of the nation. The Church co-operated with the civil magistrate, and interposed its authority, in order to extirpate a practice so repugnant to the spirit of Christianity. Various councils issued decrees, prohibiting all private wars; and denounced the heaviest anathemas against such as should disturb the tranquillity of society, by claiming or exercising that barbarous right. The aid of religion was called in to combat and subdue the ferocity of the times. The Almighty was said to have manifested, by visions and revelations to different persons, his disapprobation of that spirit of revenge, which armed one part of his creatures against the other. Men were required, in the name of God, to

[48] Capitul. A. D. 801, edit. Baluz. vol. i. p. 371.

sheathe their swords, and to remember the sacred ties which united them as Christians, and as members of the same society. But this junction of civil and ecclesiastical authority, though strengthened by everything most apt to alarm and to overawe the credulous spirit of those ages, produced no other effect than some temporary suspensions of hostilities, and a cessation from war on certain days and seasons consecrated to the more solemn acts of devotion. The nobles continued to assert this dangerous privilege; they refused to obey some of the laws calculated to annul or circumscribe it; they eluded others; they petitioned, they remonstrated, they struggled for the right of private war, as the highest and most honorable distinction of their order. Even so late as the fourteenth century, we find the nobles, in several provinces of France, contending for their ancient method of terminating their differences by the sword, in preference to that of submitting them to the decision of any judge. The final abolition of this practice in that kingdom, and the other countries in which it prevailed, is not to be ascribed so much to the force of statutes and decrees, as to the gradual increase of the royal authority, and to the imperceptible progress of juster sentiments concerning government, order, and public security.[49]

2. The prohibition of the form of trial by judicial combat, was another considerable step towards the introduction of such regular government as secured

[49] Note XXI.

public order and private tranquillity. As the right of private war left many of the quarrels among individuals to be decided, like those between nations, by arms, the form of trial by judicial combat, which was established in every country of Europe, banished equity from courts of justice, and rendered chance or force the arbiter of their determinations. In civilized nations, all transactions of any importance are concluded in writing. The exhibition of the deed or instrument is full evidence of the fact, and ascertains with precision what each party has stipulated to perform. But among a rude people, when the arts of reading and writing were such uncommon attainments that to be master of either entitled a person to the appellation of a clerk or learned man, scarcely anything was committed to writing but treaties between princes, their grants and charters to their subjects, or such transactions between private parties as were of extraordinary consequence, or had an extensive effect. The greater part of affairs in common life and business was carried on by verbal contracts or promises. This, in many civil questions, not only made it difficult to bring proof sufficient to establish any claim, but encouraged falsehood and fraud, by rendering them extremely easy. Even in criminal cases, where a particular fact must be ascertained, or an accusation must be disproved, the nature and effect of legal evidence were little understood by barbarous nations. To define with accuracy that species of evidence which a court had reason to expect; to

determine when it ought to insist on positive proof, and when it should be satisfied with a proof from circumstances; to compare the testimony of discordant witnesses; and to fix the degree of credit due to each, — were discussions too intricate and subtile for the jurisprudence of ignorant ages. In order to avoid encumbering themselves with these, a more simple form of procedure was introduced into courts as well civil as criminal. In all cases, where the notoriety of the fact did not furnish the clearest and most direct evidence, the person accused, or he against whom an action was brought, was called legally, or offered voluntarily, to purge himself by oath; and upon his declaring his innocence, he was instantly acquitted.[50] This absurd practice effectually screened guilt and fraud from detection and punishment, by rendering the temptation to perjury so powerful, that it was not easy to resist it. The pernicious effects of it were sensibly felt; and in order to guard against them, the laws ordained that oaths should be administered with great solemnity, and accompanied with every circumstance which could inspire religious reverence or superstitious terror.[51] This, however, proved a feeble remedy: these ceremonious rites became familiar, and their impression on the imagination gradually diminished; men who could venture to

[50] Leg. Burgund. tit. 8, et 45. Leg. Aleman. tit. 89. Leg. Baiwar. tit. 8, § 5, 2, &c.

[51] Du Cange, Glossar. voc. *Juramentum*, vol. iii. p. 1607, edit. Benedict.

disregard truth were not apt to startle at the solemnities of an oath. Their observation of this put legislators upon devising a new expedient for rendering the purgation by oath more certain and satisfactory. They required the person accused to appear with a certain number of freemen, his neighbors or relations, who corroborated the oath which he took, by swearing that they believed all that he had uttered to be true. These were called *compurgators*, and their number varied according to the importance of the subject in dispute, or the nature of the crime with which a person was charged.[52] In some cases, the concurrence of no less than three hundred of these auxiliary witnesses was requisite to acquit the person accused.[53] But even this device was found to be ineffectual. It was a point of honor with every man in Europe, during several ages, not to desert the chief on whom he depended, and to stand by those with whom the ties of blood connected him. Whoever then was bold enough to violate the laws, was sure of devoted adherents, willing to abet and eager to serve him in whatever manner he required. The formality of calling compurgators proved an apparent, not a real security, against falsehood and perjury; and the sentences of courts, while they continued to refer every point in question to the oath of the defendant, became so flagrantly iniquitous,

[52] Du Cange, ibid. vol. iii. p. 1599.

[53] Spelman, Glossar. voc. *Assath.* Gregor. Turon. Hist. lib. viii c. 9.

as to excite universal indignation against this method of procedure.[54]

Sensible of these defects, but strangers to the manner of correcting them, or of introducing a more proper form, our ancestors, as an infallible method of discovering truth, and of guarding against deception, appealed to Heaven, and referred every point in dispute to be determined, as they imagined, by the decisions of unerring wisdom and impartial justice. The person accused, in order to prove his innocence, submitted to trial, in certain cases, either by plunging his arm in boiling water; or by lifting a red-hot iron with his naked hand; or by walking barefoot over burning ploughshares; or by other experiments equally perilous and formidable. On other occasions, he challenged his accuser to fight him in single combat. All these various forms of trial were conducted with many devout ceremonies; the ministers of religion were employed, the Almighty was called upon to interpose for the manifestation of guilt, and for the protection of innocence; and whoever escaped unhurt, or came off victorious, was pronounced to be acquitted by the *judgment of God*.[55]

Among all the whimsical and absurd institutions which owe their existence to the weakness of human reason, this, which submitted questions that affected the property, the reputation, and the lives of men to the determination of chance, or of bodily strength

[54] Leg. Langobard. lib. ii. tit. 55, § 34.

[55] Murat. Dissertatio de Judiciis Dei, Antiquit. Ital. vol. iii. p. 612.

and address, appears to be the most extravagant and preposterous. There were circumstances, however, which led the nations of Europe to consider this equivocal mode of deciding any point in contest, as a direct appeal to Heaven, and a certain method of discovering its will. As men are unable to comprehend the manner in which the Almighty carries on the government of the universe, by equal, fixed, and general laws, they are apt to imagine, that in every case which their passions or interest render important in their own eyes, the Supreme Ruler of all ought visibly to display his power in vindicating innocence and punishing guilt. It requires no inconsiderable degree of science and philosophy to correct this popular error. But the sentiments prevalent in Europe during the Dark Ages, instead of correcting, strengthened it. Religion, for several centuries, consisted chiefly in believing the legendary history of those saints whose names crowd and disgrace the Romish calendar. The fabulous tales concerning their miracles had been declared authentic by the bulls of popes and the decrees of councils; they made the great subjects of the instructions which the clergy offered to the people, and were received by them with implicit credulity and admiration. By attending to these, men were accustomed to believe that the established laws of nature might be violated on the most frivolous occasions, and were taught to look rather for particular and extraordinary acts of power under the Divine administration, than to contemplate the regular progress

and execution of a general plan. One superstition prepared the way for another; and whoever believed that the Supreme Being had interposed miraculously on those trivial occasions mentioned in legends, could not but expect his intervention in matters of greater importance, when solemnly referred to his decision.

With this superstitious opinion, the martial spirit of Europe, during the Middle Ages, concurred in establishing the mode of trial by judicial combat. To be ready to maintain with his sword whatever his lips had uttered, was the first maxim of honor with every gentleman. To assert their own rights by force of arms, to inflict vengeance on those who had injured or affronted them, were the distinction and pride of high-spirited nobles. The form of trial by combat, coinciding with this maxim, flattered and gratified these passions. Every man was the guardian of his own honor, and of his own life; the justice of his cause, as well as his future reputation, depended on his own courage and prowess. This mode of decision was considered, accordingly, as one of the happiest efforts of wise policy; and as soon as it was introduced, all the forms of trial, by fire or water, and other superstitious experiments, fell into disuse, or were employed only in controversies between persons of inferior rank. As it was the privilege of a gentleman to claim the trial by combat, it was quickly authorized over all Europe, and received in every country with equal satisfaction. Not only questions concerning un-

certain or contested facts, but general and abstract points in law, were determined by the issue of a combat; and the latter was deemed a method of discovering truth more liberal, as well as more satisfactory, than that by investigation and argument. Not only might parties, whose minds were exasperated by the eagerness and the hostility of opposition, defy their antagonist, and require him to make good his charge, or to prove his innocence, with his sword; but witnesses, who had no interest in the issue of the question, though called to declare the truth by laws which ought to have afforded them protection, were equally exposed to the danger of a challenge, and equally bound to assert the veracity of their evidence by dint of arms. To complete the absurdities of this military jurisprudence, even the character of a judge was not sacred from its violence. Any one of the parties might interrupt a judge when about to deliver his opinion; might accuse him of iniquity and corruption in the most reproachful terms, and, throwing down his gauntlet, might challenge him to defend his integrity in the field; nor could he, without infamy, refuse to accept the defiance, or decline to enter the lists against such an adversary.

Thus the form of trial by combat, like other abuses, spread gradually, and extended to all persons, and almost to all cases. Ecclesiastics, women, minors, superannuated and infirm persons, who could not with decency or justice be compelled to take arms, or to maintain their own cause, were

obliged to produce champions, who offered from affection, or were engaged by rewards, to fight their battles. The solemnities of a judicial combat were such as were natural in an action which was considered both as a formal appeal to God, and as the final decision of questions of the highest moment. Every circumstance relating to them was regulated by the edicts of princes, and explained in the comments of lawyers, with a minute and even superstitious accuracy. Skill in these laws and rights was frequently the only science of which warlike nobles boasted, or which they were ambitious to attain.[56]

By this barbarous custom, the natural course of proceeding, both in civil and criminal questions, was entirely perverted. Force usurped the place of equity in courts of judicature, and justice was banished from her proper mansion. Discernment, learning, integrity, were qualities less necessary to a judge than bodily strength and dexterity in the use of arms. Daring courage, and superior vigor or address, were of more moment towards securing the favorable issue of a suit, than the equity of a cause, or the clearness of the evidence. Men, of course, applied themselves to cultivate the talents which they found to be of greatest utility. As strength of body and address in arms were no less requisite in those lists which they were obliged to

[56] See a curious discourse concerning the laws of judicial combat, by Thomas of Woodstock, duke of Gloucester, uncle to Richard II., in Spelman's Glossar. voc. *Campus*.

enter, in defence of their private rights, than in the field of battle, where they met the enemies of their country, it became the great object of education, as well as the chief employment of life, to acquire these martial accomplishments. The administration of justice, instead of accustoming men to listen to the voice of equity, or to reverence the decisions of law, added to the ferocity of their manners, and taught them to consider force as the great arbiter of right and wrong.

These pernicious effects of the trial by combat were so obvious, that they did not altogether escape the view of the unobserving age in which it was introduced. The clergy, from the beginning, remonstrated against it, as repugnant to the spirit of Christianity, and subversive of justice and order.[57] But the maxims and passions which favored it had taken such hold of the minds of men, that they disregarded admonitions and censures, which, on other occasions, would have struck them with terror. The evil was too great and inveterate to yield to that remedy, and, continuing to increase, the civil power at length found it necessary to interpose. Conscious, however, of their own limited authority, monarchs proceeded with caution, and their first attempts to restrain, or to set any bounds to this practice, were extremely feeble. One of the earliest restrictions of this practice which occurs in the history of Europe, is that of Henry I. of England. It extended no farther than to prohibit the trial by combat in ques-

[57] Du Cange, Glossar. voc. *Duellum*, vol. ii. p. 1675.

tions concerning property of small value.[58] Louis VII. of France imitated his example, and issued an edict to the same effect.[59] St. Louis, whose ideas as a legislator were far superior to those of his age, endeavored to introduce a more perfect jurisprudence, and to substitute the trial by evidence, in place of that by combat: but his regulations with respect to this were confined to his own domains; for the great vassals of the crown possessed such independent authority, and were so fondly attached to the ancient practice, that he had not power to venture to extend it to the whole kingdom. Some barons voluntarily adopted his regulations. The spirit of courts of justice became averse to the mode of decision by combat, and discouraged it on every occasion. The nobles, nevertheless, thought it so honorable to depend for the security of their lives and fortunes on their own courage alone, and contended with so much vehemence for the preservation of this favorite privilege of their order, that the successors of St. Louis, unable to oppose and afraid of offending such powerful subjects, were obliged, not only to tolerate, but to authorize the practice which he had attempted to abolish.[60] In other countries of Europe, efforts equally zealous were employed to maintain the established custom; and similar concessions were extorted from their respective sovereigns. It continued, however, to be an object of policy with every monarch of abilities or vigor, to explode the trial by combat; and various edicts were issued for

[58] Brussel, Usage des Fiefs, vol. ii. p. 962.

[59] Ordon. tom. i. p. 16.

[60] Id. ibid. pp. 328, 390, 435.

this purpose. But the observation which was made concerning the right of private war, is equally applicable to the mode of trial under review. No custom, how absurd soever it may be, if it has subsisted long, or derived its source from the manners and prejudices of the age in which it prevails, was ever abolished by the bare promulgation of laws and statutes. The sentiments of the people must change, or some new power sufficient to counteract the prevalent custom must be introduced. Such a change accordingly took place in Europe, as science gradually increased, and society advanced towards more perfect order. In proportion as the prerogative of princes extended, and came to acquire new force, a power interested in suppressing every practice favorable to the independence of the nobles was introduced. The struggle, nevertheless, subsisted for several centuries; sometimes the new regulations and ideas seemed to gain ground; sometimes ancient habits recurred: and though, upon the whole, the trial by combat went more and more into disuse, yet instances of it occur as late as the sixteenth century, in the history both of France and of England. In proportion as it declined, the regular administration of justice was restored, the proceedings of courts were directed by known laws, the study of these became an object of attention to judges, and the people of Europe advanced fast towards civility, when this great cause of the ferocity of their manners was removed.[61]

[61] Note XXII.

3. By authorizing the right of appeal from the courts of the barons to those of the king, and subjecting the decisions of the former to the review of the latter, a new step, not less considerable than those which I have already mentioned, was taken towards establishing the regular, consistent, and vigorous administration of justice. Among all the encroachments of the feudal nobles on the prerogative of their monarchs, their usurping the administration of justice with supreme authority, both in civil and criminal causes, within the precincts of their own estates, was the most singular. In other nations, subjects have contended with their sovereigns, and have endeavored to extend their own power and privileges; but in the history of their struggles and pretensions we discover nothing similar to this right which the feudal barons claimed, and obtained. It must have been something peculiar in their genius and manners that suggested this idea, and prompted them to insist on such a claim. Among the rude people who conquered the various provinces of the Roman empire, and established new kingdoms there, the passion of resentment, too impetuous to bear control, was permitted to remain almost unrestrained by the authority of laws. The person offended, as has been observed, retained, not only the right of prosecuting, but of punishing his adversary. To him it belonged to inflict such vengeance as satiated his rage, or to accept of such satisfaction as appeased it. But while fierce barbarians continued to be the sole judges in

their own cause, their enmities were implacable and immortal; they set no bounds either to the degree of their vengeance, or to the duration of their resentment. The excesses which this occasioned proved so destructive of peace and order in society, as to render it necessary to devise some remedy. At first, recourse was had to arbitrators, who by persuasion or entreaty prevailed on the party offended to accept of a fine or composition from the aggressor, and to drop all farther prosecution. But as submission to persons who had no legal or magisterial authority was altogether voluntary, it became necessary to establish judges, with power sufficient to enforce their own decisions. The leader whom they were accustomed to follow and to obey, whose courage they respected, and in whose integrity they placed confidence, was the person to whom a martial people naturally committed this important prerogative. Every chieftain was the commander of his tribe in war, and their judge in peace. Every baron led his vassals to the field, and administered justice to them in his hall. The high-spirited dependents would not have recognized any other authority, or have submitted to any other jurisdiction. But in times of turbulence and violence the exercise of this new function was attended, not only with trouble, but with danger. No person could assume the character of a judge, if he did not possess power sufficient to protect the one party from the violence of private revenge, and to compel the other to accept of such reparation as

he enjoined. In consideration of the extraordinary efforts which this office required, judges, besides the fine which they appointed to be paid as a compensation to the person or family who had been injured, levied an additional sum as a recompense for their own labor; and in all the feudal kingdoms the latter was not only as precisely ascertained, but as regularly exacted, as the former.

Thus, by the natural operation of circumstances peculiar to the manners or political state of the feudal nations, separate and territorial jurisdictions came not only to be established in every kingdom, but were established in such a way that the interest of the barons concurred with their ambition in maintaining and extending them. It was not merely a point of honor with the feudal nobles to dispense justice to their vassals; but from the exercise of that power arose one capital branch of their revenue; and the emoluments of their courts were frequently the main support of their dignity. It was with infinite zeal that they asserted and defended this high privilege of their order. By this institution, however, every kingdom in Europe was split into as many separate principalities as it contained powerful barons. Their vassals, whether in peace or in war, were hardly sensible of an authority but that of their immediate superior lord. They felt themselves subject to no other command. They were amenable to no other jurisdiction. The ties which linked together these smaller confederacies became close and firm; the bonds of public union relaxed,

or were dissolved. The nobles strained their invention in devising regulations which tended to ascertain and perpetuate this distinction. In order to guard against any appearance of subordination in their courts to those of the crown, they frequently constrained their monarchs to prohibit the royal judges from entering their territories, or from claiming any jurisdiction there; and if, either through mistake or from the spirit of encroachment, any royal judge ventured to extend his authority to the vassals of a baron, they might plead their right of exemption, and the lord of whom they held could not only rescue them out of his hands, but was entitled to legal reparation for the injury and affront offered to him. The jurisdiction of the royal judges scarcely reached beyond the narrow limits of the king's demesnes. Instead of a regular gradation of courts, all acknowledging the authority of the same general laws, and looking up to these as the guides of their decisions, there were in every feudal kingdom a number of independent tribunals, the proceedings of which were directed by local customs and contradictory forms. The collision of jurisdiction among these different courts often retarded the execution of justice: the variety and caprice of their modes of procedure must have for ever kept the administration of it from attaining any degree of uniformity or perfection.

All the monarchs of Europe perceived these encroachments on their jurisdiction, and bore them with impatience. But the usurpations of the nobles

were so firmly established, and the danger of endeavoring to overturn them by open force was so manifest, that kings were obliged to remain satisfied with attempts to undermine them. Various expedients were employed for this purpose; each of which merits attention, as they mark the progress of law and equity in the several kingdoms of Europe. At first, princes endeavored to circumscribe the jurisdiction of the barons, by contending that they ought to take cognizance only of smaller offences; reserving those of greater moment, under the appellation of *pleas of the crown*, and *royal causes*, to be tried in the king's courts. This, however, affected only the barons of inferior note; the more powerful nobles scorned such a distinction, and not only claimed unlimited jurisdiction, but obliged their sovereigns to grant them charters, conveying or recognizing this privilege in the most ample form. The attempt, nevertheless, was productive of some good consequences, and paved the way for more. It turned the attention of men towards a jurisdiction distinct from that of the baron whose vassals they were; it accustomed them to the pretensions of superiority which the crown claimed over territorial judges; and taught them, when oppressed by their own superior lord, to look up to their sovereign as their protector. This facilitated the introduction of appeals, by which princes brought the decisions of the barons' courts under the review of the royal judges. While trial by combat subsisted in full vigor, no point decided

according to that mode could be brought under the review of another court. It had been referred to the judgment of God; the issue of battle had declared his will; and it would have been impious to have called in question the equity of the divine decision. But as soon as that barbarous custom began to fall into disuse, princes encouraged the vassals of the barons to sue for redress, by appealing to the royal courts. The progress of this practice, however, was slow and gradual. The first instances of appeals were on account of *the delay* or *the refusal of justice* in the barons' court; and as these were countenanced by the ideas of subordination in the feudal constitution, the nobles allowed them to be introduced without much opposition. But when these were followed by appeals on account of *the injustice* or *iniquity of the sentence*, the nobles then began to be sensible, that, if this innovation became general, the shadow of power alone would remain in their hands, and all real authority and jurisdiction would centre in those courts which possessed the right of review. They instantly took the alarm, remonstrated against the encroachment, and contended boldly for their ancient privileges. But the monarchs in the different kingdoms of Europe pursued their plan with steadiness and prudence. Though forced to suspend their operations on some occasions, and seemingly to yield when any formidable confederacy of their vassals united against them, they resumed their measures as soon as they observed the nobles

to be remiss or feeble, and pushed them with vigor. They appointed the royal courts, which originally were ambulatory, and irregular with respect to their times of meeting, to be held in a fixed place, and at stated seasons. They were solicitous to name judges of more distinguished abilities than such as usually presided in the courts of barons. They added dignity to their character, and splendor to their assemblies. They labored to render their forms regular and their decrees consistent. Such judicatories became, of course, the objects of public confidence as well as veneration. The people, relinquishing the tribunals of their lords, were eager to bring every subject of contest under the more equal and discerning eye of those whom their sovereign had chosen to give judgment in his name. Thus kings became once more the heads of the community, and the dispensers of justice to their subjects. The barons, in some kingdoms, ceased to exercise their right of jurisdiction, because it sunk into contempt; in others, it was circumscribed by such regulations as rendered it innocent, or it was entirely abolished by express statutes. Thus the administration of justice, taking its rise from one source, and following one direction, held its course in every state with more uniformity, and with greater force.[62]

VI. The forms and maxims of the canon law, which were become universally respectable, from their authority in the spiritual courts, contributed

[62] Note XXIII.

not a little towards those improvements in jurisprudence which I have enumerated. If we consider the canon law politically, and view it either as a system framed on purpose to assist the clergy in usurping powers and jurisdiction no less repugnant to the nature of their function than inconsistent with the order of government, or as the chief instrument in establishing the dominion of the popes, which shook the throne, and endangered the liberties, of every kingdom in Europe, we must pronounce it one of the most formidable engines ever formed against the happiness of civil society. But if we contemplate it merely as a code of laws respecting the rights and property of individuals, and attend only to the civil effects of its decisions concerning these, it will appear in a different, and a much more favorable light. In ages of ignorance and credulity, the ministers of religion are the objects of superstitious veneration. When the barbarians who overran the Roman empire first embraced the Christian faith, they found the clergy in possession of considerable power; and they naturally transferred to those new guides the profound submission and reverence which they were accustomed to yield to the priests of that religion which they had forsaken. They deemed their persons to be equally sacred with their function; and would have considered it as impious to subject them to the profane jurisdiction of the laity. The clergy were not blind to these advantages which the weakness of mankind afforded them. They estab-

lished courts, in which every question relating to their own character, their function, or their property, was tried. They pleaded and obtained an almost total exemption from the authority of civil judges. Upon different pretexts, and by a multiplicity of artifices, they communicated this privilege to so many persons, and extended their jurisdiction to such a variety of cases, that the greater part of those affairs which give rise to contest and litigation was drawn under the cognizance of the spiritual courts.

But in order to dispose the laity to suffer these usurpations without murmur or opposition, it was necessary to convince them that the administration of justice would be rendered more perfect by the establishment of this new jurisdiction. This was not a difficult undertaking at that period, when ecclesiastics carried on their encroachments with the greatest success. That scanty portion of science which served to guide men in the ages of darkness, was almost entirely engrossed by the clergy. They alone were accustomed to read, to inquire, and to reason. Whatever knowledge of ancient jurisprudence had been preserved, either by tradition, or in such books as had escaped the destructive rage of barbarians, was possessed by them. Upon the maxims of that excellent system, they founded a code of laws consonant to the great principles of equity. Being directed by fixed and known rules, the forms of their courts were ascertained, and their decisions became uniform and

consistent. Nor did they want authority sufficient to enforce their sentences. Excommunication and other ecclesiastical censures were punishments more formidable than any that civil judges could inflict in support of their decrees.

It is not surprising, then, that ecclesiastical jurisprudence should become such an object of admiration and respect, that exemption from civil jurisdiction was courted as a privilege, and conferred as a reward. It is not surprising, that, even to a rude people, the maxims of the canon law should appear more equal and just than those of the ill-digested jurisprudence which directed all proceedings in civil courts. According to the latter, the differences between contending barons were terminated, as in a state of nature, by the sword; according to the former, every matter was subjected to the decision of laws. The one, by permitting judicial combats, left chance and force to be arbiters of right or wrong, of truth or falsehood; the other passed judgment with respect to these by the maxims of equity, and the testimony of witnesses. Any error or iniquity in a sentence pronounced by a baron to whom feudal jurisdiction belonged, was irremediable, because originally it was subject to the review of no superior tribunal; the ecclesiastical law established a regular gradation of courts, through all which a cause might be carried by appeal, until it was determined by that authority which was held to be supreme in the Church. Thus the genius and principles of the canon law

prepared men for approving those three great alterations in the feudal jurisprudence which I have mentioned. But it was not with respect to these points alone that the canon law suggested improvements beneficial to society. Many of the regulations, now deemed the barriers of personal security, or the safeguards of private property, are contrary to the spirit, and repugnant to the maxims, of the civil jurisprudence known in Europe during several centuries, and were borrowed from the rules and practice of the ecclesiastical courts. By observing the wisdom and equity of the decisions in these courts, men began to perceive the necessity either of deserting the martial tribunals of the barons, or of attempting to reform them.[63]

VII. The revival of the knowledge and study of the Roman law co-operated with the causes which I have mentioned, in introducing more just and liberal ideas concerning the nature of government, and the administration of justice. Among the calamities which the devastations of the barbarians who broke in upon the empire brought upon mankind, one of the greatest was their overturning the system of Roman jurisprudence, the noblest monument of the wisdom of that great people, formed to subdue and to govern the world. The laws and regulations of a civilized community were repugnant to the manners and ideas of these fierce invaders. They had respect to objects of which a rude people had no conception; and were adapted to a

[63] Note XXIV.

state of society with which they were entirely unacquainted. For this reason, wherever they settled, the Roman jurisprudence soon sunk into oblivion, and lay buried for some centuries under the load of those institutions which the inhabitants of Europe dignified with the name of laws. But towards the middle of the twelfth century, a copy of Justinian's Pandects was accidentally discovered in Italy. By that time, the state of society was so far advanced, and the ideas of men so much enlarged and improved by the occurrences of several centuries, during which they had continued in political union, that they were struck with admiration of a system which their ancestors could not comprehend. Though they had not hitherto attained such a degree of refinement as to acquire from the ancients a relish for true philosophy or speculative science; though they were still insensible, in a great degree, to the beauty and elegance of classical composition; they were sufficiently qualified to judge with respect to the merit of their system of laws, in which all the points most interesting to mankind were settled with discernment, precision, and equity. All men of letters studied this new science with eagerness; and within a few years after the discovery of the Pandects, professors of civil law were appointed, who taught it publicly in most countries of Europe.

The effects of having such an excellent model to study and to imitate were immediately perceived.

Men, as soon as they were acquainted with fixed and general laws, perceived the advantage of them, and became impatient to ascertain the principles and forms by which judges should regulate their decisions. Such was the ardor with which they carried on an undertaking of so great importance to society, that, before the close of the twelfth century, the feudal law was reduced into a regular system; the code of canon law was enlarged and methodized; and the loose, uncertain customs of different provinces or kingdoms were collected and arranged with an order and accuracy acquired from the knowledge of Roman jurisprudence. In some countries of Europe the Roman law was adopted as subsidiary to their own municipal law; and all cases to which the latter did not extend were decided according to the principles of the former. In others, the maxims as well as forms of Roman jurisprudence mingled imperceptibly with the laws of the country, and had a powerful, though less sensible, influence in improving and perfecting them.[64]

These various improvements in the system of jurisprudence and administration of justice occasioned a change in manners, of great importance and of extensive effect. They gave rise to a distinction of professions; they obliged men to cultivate different talents, and to aim at different accomplishments, in order to qualify themselves for the various departments and functions which became

[64] Note XXV.

necessary in society.[65] Among uncivilized nations, there is but one profession honorable, that of arms. All the ingenuity and vigor of the human mind are exerted in acquiring military skill or address. The functions of peace are few and simple; and require no particular course of education or of study as a preparation for discharging them. This was the state of Europe during several centuries. Every gentleman, born a soldier, scorned any other occupation; he was taught no science but that of war; even his exercises and pastimes were feats of martial prowess. Nor did the judicial character, which persons of noble birth were alone entitled to assume, demand any degree of knowledge beyond that which such untutored soldiers possessed. To recollect a few traditionary customs which time had confirmed, and rendered respectable; to mark out the lists of battle with due formality; to observe the issue of the combat; and to pronounce whether it had been conducted according to the laws of arms, included everything that a baron, who acted as a judge, found it necessary to understand.

But when the forms of legal proceedings were fixed, when the rules of decision were committed to writing, and collected into a body, law became a science, the knowledge of which required a regular course of study, together with long attention to the practice of courts. Martial and illiterate nobles had neither leisure nor inclination to undertake a

[65] Dr. Fergusson's Essay on the History of Civil Society, part iv. sect. i.

task so laborious, as well as so foreign from all the occupations which they deemed entertaining, or suitable to their rank. They gradually relinquished their places in courts of justice, where their ignorance exposed them to contempt. They became weary of attending to the discussion of cases, which grew too intricate for them to comprehend. Not only the judicial determination of points which were the subject of controversy, but the conduct of all legal business and transactions, was committed to persons trained by previous study and application to the knowledge of law. An order of men, to whom their fellow-citizens had daily recourse for advice, and to whom they looked up for decision in their most important concerns, naturally acquired consideration and influence in society. They were advanced to honors which had been considered hitherto as the peculiar rewards of military virtue. They were intrusted with offices of the highest dignity and most extensive power. Thus, another profession than that of arms came to be introduced among the laity, and was reputed honorable. The functions of civil life were attended to. The talents requisite for discharging them were cultivated. A new road was opened to wealth and eminence. The arts and virtues of peace were placed in their proper rank, and received their due recompense.[66]

VIII. While improvements, so important with respect to the state of society and the administra-

[66] Note XXVI.

tion of justice, gradually made progress in Europe, sentiments more liberal and generous had begun to animate the nobles. These were inspired by the spirit of chivalry, which, though considered, commonly, as a wild institution, the effect of caprice, and the source of extravagance, arose naturally from the state of society at that period, and had a very serious influence in refining the manners of the European nations. The feudal state was a state of almost perpetual war, rapine, and anarchy, during which the weak and unarmed were exposed to insults or injuries. The power of the sovereign was too limited to prevent these wrongs; and the administration of justice too feeble to redress them. The most effectual protection against violence and oppression was often found to be that which the valor and generosity of private persons afforded. The same spirit of enterprise which had prompted so many gentlemen to take arms in defence of the oppressed pilgrims in Palestine, incited others to declare themselves the patrons and avengers of injured innocence at home. When the final reduction of the Holy Land under the dominion of infidels put an end to these foreign expeditions, the latter was the only employment left for the activity and courage of adventurers. To check the insolence of overgrown oppressors; to rescue the helpless from captivity; to protect or to avenge women, orphans, and ecclesiastics, who could not bear arms in their own defence; to redress wrongs, and to remove grievances, — were deemed acts of the highest

prowess and merit. Valor, humanity, courtesy, justice, honor, were the characteristic qualities of chivalry. To these was added religion, which mingled itself with every passion and institution during the Middle Ages, and, by infusing a large proportion of enthusiastic zeal, gave them such force as carried them to romantic excess. Men were trained to knighthood by a long previous discipline; they were admitted into the order by solemnities no less devout than pompous; every person of noble birth courted that honor; it was deemed a distinction superior to royalty; and monarchs were proud to receive it from the hands of private gentlemen.

This singular institution, in which valor, gallantry, and religion were so strangely blended, was wonderfully adapted to the taste and genius of martial nobles; and its effects were soon visible in their manners. War was carried on with less ferocity, when humanity came to be deemed the ornament of knighthood no less than courage. More gentle and polished manners were introduced, when courtesy was recommended as the most amiable of knightly virtues. Violence and oppression decreased, when it was reckoned meritorious to check and to punish them. A scrupulous adherence to truth, with the most religious attention to fulfil every engagement, became the distinguishing characteristic of a gentleman, because chivalry was regarded as the school of honor, and inculcated the most delicate sensibility with respect to those points.

The admiration of these qualities, together with the high distinctions and prerogatives conferred on knighthood in every part of Europe, inspired persons of noble birth on some occasions with a species of military fanaticism, and led them to extravagant enterprises. But they deeply imprinted on their minds the principles of generosity and honor. These were strengthened by everything that can affect the senses or touch the heart. The wild exploits of those romantic knights who sallied forth in quest of adventures are well known, and have been treated with proper ridicule. The political and permanent effects of the spirit of chivalry have been less observed. Perhaps the humanity which accompanies all the operations of war, the refinements of gallantry, and the point of honor, the three chief circumstances which distinguish modern from ancient manners, may be ascribed in a great measure to this institution, which has appeared whimsical to superficial observers, but by its effects has proved of great benefit to mankind. The sentiments which chivalry inspired had a wonderful influence on manners and conduct during the twelfth, thirteenth, fourteenth, and fifteenth centuries. They were so deeply rooted, that they continued to operate after the vigor and reputation of the institution itself began to decline. Some considerable transactions recorded in the following history resemble the adventurous exploits of chivalry, rather than the well-regulated operations of sound policy. Some of the most eminent personages

whose characters will be delineated were strongly tinctured with this romantic spirit. Francis I. was ambitious to distinguish himself by all the qualities of an accomplished knight, and endeavored to imitate the enterprising genius of chivalry in war, as well as its pomp and courtesy during peace. The fame which the French monarch acquired by these splendid actions so far dazzled his more temperate rival, that he departed on some occasions from his usual prudence and moderation, and emulated Francis in deeds of prowess or of gallantry.[67]

IX. The progress of science, and the cultivation of literature, had considerable effect in changing the manners of the European nations, and introducing that civility and refinement by which they are now distinguished. At the time when their empire was overturned, the Romans, though they had lost that correct taste which has rendered the productions of their ancestors standards of excellence and models of imitation for succeeding ages, still preserved their love of letters, and cultivated the arts with great ardor. But rude barbarians were so far from being struck with any admiration of these unknown accomplishments, that they despised them. They were not arrived at that state of society, when those faculties of the human mind which have beauty and elegance for their objects begin to unfold themselves. They were strangers to most of those wants and desires which are the parents of ingenious invention; and as they did not

[67] Note XXVII.

comprehend either the merit or utility of the Roman arts, they destroyed the monuments of them, with an industry not inferior to that which their posterity have since studied to preserve or to recover them. The convulsions occasioned by the settlement of so many unpolished tribes in the empire; the frequent as well as violent revolutions in every kingdom which they established; together with the interior defects in the form of government which they introduced, banished security and leisure, prevented the growth of taste or the culture of science, and kept Europe, during several centuries, in that state of ignorance which has been already described. But the events and institutions which I have enumerated produced great alterations in society. As soon as their operation, in restoring liberty and independence to one part of the community, began to be felt; as soon as they began to communicate to all the members of society some taste of the advantages arising from commerce, from public order, and from personal security, the human mind became conscious of powers which it did not formerly perceive, and fond of occupations or pursuits of which it was formerly incapable. Towards the beginning of the twelfth century, we discern the first symptoms of its awakening from that lethargy in which it had been long sunk, and observe it turning with curiosity and attention towards new objects.

The first literary efforts, however, of the European nations in the Middle Ages were extremely

ill directed. Among nations, as well as individuals, the powers of imagination attain some degree of vigor before the intellectual faculties are much exercised in speculative or abstract disquisition. Men are poets before they are philosophers; they feel with sensibility, and describe with force, when they have made but little progress in investigation or reasoning. The age of Homer and of Hesiod long preceded that of Thales or of Socrates. But, unhappily for literature, our ancestors, deviating from this course which nature points out, plunged at once into the depths of abstruse and metaphysical inquiry. They had been converted to the Christian faith soon after they settled in their new conquests. But they did not receive it pure: the presumption of men had added to the simple and instructive doctrines of Christianity the theories of a vain philosophy, that attempted to penetrate into mysteries, and to decide questions, which the limited faculties of the human mind are unable to comprehend or to resolve. These over-curious speculations were incorporated with the system of religion, and came to be considered as the most essential part of it. As soon, then, as curiosity prompted men to inquire and to reason, these were the subjects which first presented themselves, and engaged their attention. The scholastic theology, with its infinite train of bold disquisitions, and subtile distinctions concerning points which are not the object of human reason, was the first production of the spirit of inquiry, after it began to resume some degree of activ-

ity and vigor in Europe. It was not, however, this circumstance alone that gave such a strong turn to the minds of men, when they began again to exercise talents which they had so long neglected. Most of the persons who attempted to revive literature in the twelfth and thirteenth centuries had received instruction, or derived their principles of science, from the Greeks in the Eastern empire, or from the Arabians in Spain and Africa. Both these people, acute and inquisitive to excess, had corrupted those sciences which they cultivated. The former rendered theology a system of speculative refinement, or of endless controversy; the latter communicated to philosophy a spirit of metaphysical and frivolous subtlety. Misled by these guides, the persons who first applied to science were involved in a maze of intricate inquiries. Instead of allowing their fancy to take its natural range, and to produce such works of invention as might have improved their taste and refined their sentiments,—instead of cultivating those arts which embellish human life, and render it comfortable,—they were fettered by authority, they were led astray by example, and wasted the whole force of their genius in speculations as unavailing as they were difficult.

But fruitless and ill directed as these speculations were, their novelty roused, and their boldness interested, the human mind. The ardor with which men pursued these uninviting studies was astonishing. Genuine philosophy was never cultivated, in

any enlightened age, with more zeal. Schools, upon the model of those instituted by Charlemagne, were opened in every cathedral, and almost in every monastery of note. Colleges and universities were erected and formed into communities or corporations, governed by their own laws, and invested with separate and extensive jurisdiction over their own members. A regular course of studies was planned; privileges of great value were conferred on masters and scholars; academical titles and honors of various kinds were invented as a recompense for both. Nor was it in the schools alone that superiority in science led to reputation and authority; it became an object of respect in life, and advanced such as acquired it to a rank of no inconsiderable eminence. Allured by all these advantages, an incredible number of students resorted to those new seats of learning, and crowded with eagerness into that new path which was open to fame and distinction.

But how considerable soever these first efforts may appear, there was one circumstance which prevented the effects of them from being as extensive as they naturally ought to have been. All the languages in Europe, during the period under review, were barbarous; they were destitute of elegance, of force, and even of perspicuity. No attempt had been hitherto made to improve or to polish them. The Latin tongue was consecrated by the Church to religion; custom, with authority scarcely less sacred, had appropriated it to litera-

ture. All the sciences cultivated in the twelfth and thirteenth centuries were taught in Latin; all books with respect to them were written in that language. It would have been deemed a degradation of any important subject to have treated of it in a modern language. This confined science within a very narrow circle; the learned alone were admitted into the temple of knowledge; the gate was shut against all others, who were suffered to remain involved in their former darkness and ignorance.

But though science was thus prevented, during several ages, from diffusing itself through society, and its influence was much circumscribed, the progress which it made may be mentioned, nevertheless, among the great causes which contributed to introduce a change of manners into Europe. The ardent, though ill-judged spirit of inquiry which I have described, occasioned a fermentation of mind that put ingenuity and invention in motion, and gave them vigor. It led men to a new employment of their faculties, which they found to be agreeable as well as interesting. It accustomed them to exercises and occupations which tended to soften their manners, and to give them some relish for the gentle virtues, peculiar to people among whom science has been cultivated with success.[68]

X. The progress of commerce had considerable influence in polishing the manners of the European nations, and in establishing among them order,

[68] Note XXVIII.

equal laws, and humanity. The wants of men, in the original and most simple state of society, are so few, and their desires so limited, that they rest contented with the natural productions of their climate and soil, or with what they can add to these by their own rude industry. They have no superfluities to dispose of, and few necessities that demand a supply. Every little community subsisting on its own domestic stock, and satisfied with it, is either little acquainted with the states around it, or at variance with them. Society and manners must be considerably improved, and many provisions must be made for public order and personal security, before a liberal intercourse can take place between different nations. We find, accordingly, that the first effect of the settlement of the barbarians in the empire, was to divide those nations which the Roman power had united. Europe was broken into many separate communities. The intercourse between these divided states ceased almost entirely during several centuries. Navigation was dangerous in seas infested by pirates; nor could strangers trust to a friendly reception in the ports of uncivilized nations. Even between distant parts of the same kingdom the communication was rare and difficult. The lawless rapine of banditti, together with the avowed exactions of the nobles, scarcely less formidable and oppressive, rendered a journey of any length a perilous enterprise. Fixed to the spot in which they resided, the greater part of the inhabitants of Europe lost, in a great measure, the

knowledge of remote regions, and were unacquainted with their names, their situations, their climates, and their commodities.[69]

Various causes, however, contributed to revive the spirit of commerce, and to renew, in some degree, the intercourse between different nations. The Italians, by their connection with Constantinople, and other cities of the Greek empire, had preserved in their own country considerable relish for the precious commodities and curious manufactures of the East. They communicated some knowledge of these to the countries contiguous to Italy. But this commerce being extremely limited, the intercourse which it occasioned between different nations was not considerable. The crusades, by leading multitudes from every corner of Europe into Asia, opened a more extensive communication between the East and West, which subsisted for two centuries; and though the object of these expeditions was conquest, and not commerce; though the issue of them proved as unfortunate as the motives for undertaking them were wild and enthusiastic, their commercial effects, as hath been shown, were both beneficial and permanent. During the continuance of the crusades, the great cities in Italy, and in other countries of Europe, acquired liberty, and together with it such privileges as rendered them respectable and independent communities. Thus, in every state, there was formed a new order of citizens, to whom commerce presented

[69] Note XXIX.

itself as their proper object, and opened to them a certain path to wealth and consideration. Soon after the close of the holy war, the mariner's compass was invented, which, by rendering navigation more secure, encouraged it to become more adventurous, facilitated the communication between remote nations, and brought them nearer to each other.

The Italian states, during the same period, established a regular commerce with the East in the ports of Egypt, and drew from thence all the rich products of the Indies. They introduced into their own territories manufactures of various kinds, and carried them on with great ingenuity and vigor. They attempted new arts; and transplanted from warmer climates, to which they had been hitherto deemed peculiar, several natural productions which now furnish the materials of a lucrative and extended commerce. All these commodities, whether imported from Asia, or produced by their own skill, they disposed of to great advantage among the other people of Europe, who began to acquire some taste for an elegance in living unknown to their ancestors, or despised by them. During the twelfth and thirteenth centuries, the commerce of Europe was almost entirely in the hands of the Italians, more commonly known in those ages by the name of Lombards. Companies or societies of Lombard merchants settled in every different kingdom. They were taken under the immediate protection of the several governments. They enjoyed extensive priv-

ileges and immunities. The operation of the ancient barbarous laws concerning strangers was suspended with respect to them. They became the carriers, the manufacturers, and the bankers of all Europe.

While the Italians, in the South of Europe, were cultivating trade with such industry and success, the commercial spirit awakened in the North towards the middle of the thirteenth century. As the nations around the Baltic were, at that time, extremely barbarous, and infested that sea with their piracies, the cities of Lubec and Hamburg, soon after they began to open some trade with these people, found it necessary to enter into a league of mutual defence. They derived such advantages from this union, that other towns acceded to their confederacy, and, in a short time, eighty of the most considerable cities scattered through those extensive countries, which stretch from the bottom of the Baltic to Cologne on the Rhine, joined in the famous Hanseatic league, which became so formidable that its alliance was courted and its enmity was dreaded by the greatest monarchs. The members of this powerful association formed the first systematic plan of commerce known in the Middle Ages, and conducted it by common laws enacted in their general assemblies. They supplied the rest of Europe with naval stores, and pitched on different towns, the most eminent of which was at Bruges in Flanders, where they established staples in which their commerce was regularly carried on. Thither the Lombards brought the productions of

India, together with the manufactures of Italy, and exchanged them for the more bulky, but not less useful, commodities of the North. The Hanseatic merchants disposed of the cargoes which they received from the Lombards in the ports of the Baltic, or carried them up the great rivers into the interior parts of Germany.

This regular intercourse opened between the nations in the North and South of Europe, made them sensible of their mutual wants, and created such new and increasing demands for commodities of every kind, that it excited among the inhabitants of the Netherlands a more vigorous spirit in carrying on the two great manufactures of wool and flax, which seem to have been considerable in that country as early as the age of Charlemagne. As Bruges became the centre of communication between the Lombard and Hanseatic merchants, the Flemings traded with both in that city to such extent, as well as advantage, as spread among them a general habit of industry, which long rendered Flanders and the adjacent provinces the most opulent, the most populous, and best cultivated countries in Europe.

Struck with the flourishing state of these provinces, of which he discerned the true cause, Edward III. of England endeavored to excite a spirit of industry among his own subjects, who, blind to the advantages of their situation, and ignorant of the source from which opulence was destined to flow into their country, were so little attentive

to their commercial interests, as hardly to attempt those manufactures, the materials of which they furnished to foreigners. By alluring Flemish artisans to settle in his dominions, as well as by many wise laws for the encouragement and regulation of trade, Edward gave a beginning to the woollen manufactures of England, and first turned the active and enterprising genius of his people towards those arts which have raised the English to the highest rank among commercial nations.

This increase of commerce and of intercourse between nations, how inconsiderable soever it may appear in respect of their rapid and extensive progress during the last and present age, seems wonderfully great when we compare it with the state of both in Europe previous to the twelfth century. It did not fail of producing great effects. Commerce tends to wear off those prejudices which maintain distinction and animosity between nations. It softens and polishes the manners of men. It unites them by one of the strongest of all ties, the desire of supplying their mutual wants. It disposes them to peace, by establishing in every state an order of citizens bound by their interest to be the guardians of public tranquillity. As soon as the commercial spirit acquires vigor, and begins to gain an ascendant in any society, we discover a new genius in its policy, its alliances, its wars, and its negotiations. Conspicuous proofs of this occur in the history of the Italian states, of the Hanseatic league, and the cities of the Netherlands during

the period under review. In proportion as commerce made its way into the different countries of Europe, they successively turned their attention to those objects, and adopted those manners, which occupy and distinguish polished nations.[70]

[70] Note XXX.

SECTION II.

VIEW OF THE PROGRESS OF SOCIETY IN EUROPE WITH RESPECT TO THE COMMAND OF THE NATIONAL FORCE REQUISITE IN FOREIGN OPERATIONS.

Improved State of Society at the Beginning of the Fifteenth Century. — The Concentration of Resources in European States. — The Power of Monarchs; their Revenues and Armies. — Affairs of Different States at first entirely Distinct. — Progress of Combination. — Loss of Continental Territory by the English. — Effects upon the French Monarchy. — Growth of Standing Armies, and of the Royal Prerogative under Louis XI. — His Example imitated in England and in Spain. — The Heiress of Burgundy. — Perfidious Conduct of Louis XI. towards her. — Her Marriage with Maximilian, Archduke of Austria. — Invasion of Italy by Charles VIII. — The Balance of Power. — Use of Infantry in Armies. — League of Cambray against Venice.

SUCH are the events and institutions, which, by their powerful operation, contributed gradually to introduce regular government and polished manners in the various nations of Europe. When we survey the state of society, or the character of individuals, at the opening of the fifteenth century, and then turn back to view the condition of both at the time when the barbarous tribes which overturned the Roman power completed their settlement in their new conquests, the progress which mankind had made towards order and refinement will appear immense.

Government, however, was still far from having attained that state in which extensive monarchies act with the united vigor of the whole community, or carry on great undertakings with perseverance and success. Small tribes or communities, even in their rudest state, may operate in concert, and exert their utmost force. They are excited to act, not by the distant objects or the refined speculations which interest or affect men in polished societies, but by their present feelings. The insults of an enemy kindle resentment; the success of a rival tribe awakens emulation: these passions communicate from breast to breast, and all the members of the community, with united ardor, rush into the field in order to gratify their revenge, or to acquire distinction. But in widely extended states, such as the great kingdoms of Europe at the beginning of the fifteenth century, where there is little intercourse between the distant members of the community, and where every great enterprise requires previous concert and long preparation, nothing can rouse and call forth their united strength but the absolute command of a despot, or the powerful influence of regular policy. Of the former, the vast empires in the East are an example; the irresistible mandate of the sovereign reaches the most remote provinces of his dominions, and compels whatever number of his subjects he is pleased to summon to follow his standard. The kingdoms of Europe, in the present age, are an instance of the latter; the prince, by the less violent, but no less effectual operation of

laws and a well-regulated government, is enabled to avail himself of the whole force of his state, and to employ it in enterprises which require strenuous and persevering efforts.

But, at the opening of the fifteenth century, the political constitution in all the kingdoms of Europe was very different from either of these states of government. The several monarchs, though they had somewhat enlarged the boundaries of prerogative by successful encroachments on the immunities and privileges of the nobility, were possessed of an authority extremely limited. The laws and interior police of kingdoms, though much improved by the various events and regulations which I have enumerated, were still feeble and imperfect. In every country, a numerous body of nobles, who continued to be formidable notwithstanding the various expedients employed to depress them, watched all the motions of their sovereign with a jealous attention, which set bounds to his ambition, and either prevented his forming schemes of extensive enterprise, or obstructed the execution of them.

The ordinary revenues of every prince were so extremely small as to be inadequate to any great undertaking. He depended for extraordinary supplies on the good-will of his subjects, who granted them often with a reluctant, and always with a sparing hand.

As the revenues of princes were inconsiderable, the armies which they could bring into the field were unfit for long and effectual service. Instead

of being able to employ troops trained to skill in arms, and to military subordination, by regular discipline, monarchs were obliged to depend on such forces as their vassals conducted to their standard in consequence of their military tenures. These, as they were bound to remain under arms only for a short time, could not march far from their usual place of residence, and, being more attached to the lord of whom they held than to the sovereign whom they served, were often as much disposed to counteract as to forward his schemes. Nor were they, even if they had been more subject to the command of the monarch, proper instruments to carry into execution any great and arduous enterprise. The strength of an army, formed either for conquest or defence, lies in infantry. To the stability and discipline of their legions, consisting chiefly of infantry, the Romans, during the times of the republic, were indebted for their victories; and when their descendants, forgetting the institutions which had led them to universal dominion, so far altered their military system as to place their principal confidence in a numerous cavalry, the undisciplined impetuosity of the barbarous nations, who fought mostly on foot, was sufficient, as I have already observed, to overcome them. These nations, soon after they settled in their new conquests, uninstructed by the fatal error of the Romans, relinquished the customs of their ancestors, and converted the chief force of their armies into cavalry. Among the Romans this change was occasioned by

the effeminacy of their troops, who could not endure the fatigues of service, which their more virtuous and hardy ancestors had sustained with ease. Among the people who established the new monarchies into which Europe was divided, this innovation in military discipline seems to have flowed from the pride of the nobles, who, scorning to mingle with persons of inferior rank, aimed at being distinguished from them in the field, as well as during peace. The institution of chivalry, and the frequency of tournaments, in which knights, in complete armor, entered the lists on horseback with extraordinary splendor, displaying amazing address, force, and valor, brought cavalry into still greater esteem. The fondness for that service increased to such a degree, that, during the thirteenth and fourteenth centuries, the armies of Europe were composed almost entirely of cavalry. No gentleman would appear in the field but on horseback. To serve in any other manner he would have deemed derogatory to his rank. The cavalry, by way of distinction, was called *the battle*, and on it alone depended the fate of every action. The infantry, collected from the dregs and refuse of the people, ill armed and worse disciplined, was almost of no account.

As these circumstances rendered the operations of particular kingdoms less considerable and less vigorous, so they long kept the princes of Europe from giving such attention to the schemes and transactions of their neighbors, as might lead them

to form any regular system of public security. They were, of consequence, prevented from uniting in confederacy, or from acting with concert, in order to establish such a distribution and balance of power as should hinder any state from rising to a superiority which might endanger the general liberty and independence. During several centuries, the nations of Europe appear to have considered themselves as separate societies, scarcely connected together by any common interest, and little concerned in each other's affairs or operations. An extensive commerce did not afford them an opportunity of observing and penetrating into the schemes of every different state. They had not ambassadors residing constantly in every court, to watch and give early intelligence of all its motions. The expectation of remote advantages, or the prospect of distant and contingent evils, was not sufficient to excite nations to take arms. Such only as were within the sphere of immediate danger, and unavoidably exposed to injury or insult, thought themselves interested in any contest, or bound to take precautions for their own safety.

Whoever records the transactions of any of the more considerable European states during the two last centuries, must write the history of Europe. Its various kingdoms, throughout that period, have been formed into one great system, so closely united, that, each holding a determinate station, the operations of one are so felt by all as to influence their counsels and regulate their measures. But previous

to the fifteenth century, unless when vicinity of territory rendered the occasions of discord frequent and unavoidable, or when national emulation fomented or embittered the spirit of hostility, the affairs of different countries are seldom interwoven with each other. In each kingdom of Europe great events and revolutions happened, which the other powers beheld with almost the same indifference as if they had been uninterested spectators, to whom the effect of these transactions could never extend.

During the violent struggles between France and England, and notwithstanding the alarming progress which was made towards rendering one prince the master of both these kingdoms, hardly one measure, which can be considered as the result of a sagacious and prudent policy, was formed in order to guard against an event so fatal to Europe. The dukes of Burgundy and Bretagne, whom their situation would not permit to remain neutral, engaged, it is true, in the contest; but in taking their part, they seem rather to have followed the impulse of their passions, than to have been guided by any just discernment of the danger which threatened themselves and the tranquillity of Europe. The other princes, seemingly unaffected by the alternate successes of the contending parties, left them to decide the quarrel by themselves, or interposed only by feeble and ineffectual negotiations.

Notwithstanding the perpetual hostilities in which the various kingdoms of Spain were engaged during

several centuries, and the successive occurrences which visibly tended to unite that part of the continent into one great monarchy, the princes of Europe hardly took any step from which we may conclude that they gave a proper attention to that important event. They permitted a power to arise imperceptibly, and to acquire strength there, which soon became formidable to all its neighbors.

Amidst the violent convulsions with which the spirit of domination in the see of Rome, and the turbulent ambition of the German nobles, agitated the empire, neither the authority of the popes, seconded by all their artifices and intrigues, nor the solicitations of the emperors, could induce any of the powerful monarchs in Europe to engage in their quarrel, or to avail themselves of many favorable opportunities of interposing with effect and advantage.

This amazing inactivity, during transactions so interesting, is not to be imputed to any incapacity of discerning their political consequences. The power of judging with sagacity, and of acting with vigor, is the portion of men of every age. The monarchs who reigned in the different kingdoms of Europe, during several centuries, were not blind to their particular interest, negligent of the public safety, or strangers to the method of securing both. If they did not adopt that salutary system, which teaches modern politicians to take the alarm at the prospect of distant dangers, which prompts them to check the first encroachments of any formidable

power, and which renders each state the guardian, in some degree, of the rights and independence of all its neighbors, this was owing entirely to such imperfections and disorders in the civil government of each country, as made it impossible for sovereigns to act suitably to those ideas, which the posture of affairs, and their own observation, must have suggested.

But during the course of the fifteenth century, various events happened, which, by giving princes more entire command of the force in their respective dominions, rendered their operations more vigorous and extensive. In consequence of this, the affairs of different kingdoms becoming more frequently as well as more intimately connected, they were gradually accustomed to act in concert and confederacy, and were insensibly prepared for forming a system of policy, in order to establish or to preserve such a balance of power as was most consistent with the general security. It was during the reign of Charles V. that the ideas on which this system is founded first came to be fully understood. It was then that the maxims by which it has been uniformly maintained since that era were universally adopted. On this account, a view of the causes and events which contributed to establish a plan of policy, more salutary and extensive than any that has taken place in the conduct of human affairs, is not only a necessary introduction to the following work, but is a capital object in the history of Europe.

The first event that occasioned any considerable alteration in the arrangement of affairs in Europe, was the annexation of the extensive territories which England possessed on the continent to the crown of France. While the English were masters of several of the most fertile and opulent provinces in France, and a great part of its most martial inhabitants was bound to follow their standard, an English monarch considered himself rather as the rival than as the vassal of the sovereign of whom he held. The kings of France, circumscribed and thwarted in their schemes and operations by an adversary no less jealous than formidable, durst not enter upon any enterprise of importance or of difficulty. The English were always at hand, ready to oppose them. They disputed even their right to their crown, and being able to penetrate, with ease, into the heart of the kingdom, could arm against them those very hands which ought to have been employed in their defence. Timid counsels and feeble efforts were natural to monarchs in such a situation. France, dismembered and overawed, could not attain its proper station in the system of Europe. But the death of Henry V of England, happily for France, and not unfortunately for his own country, delivered the French from the calamity of having a foreign master seated on their throne. The weakness of a long minority, the dissensions in the English court, together with the unsteady and languid conduct which these occasioned, afforded the French a favorable opportunity of recovering the territories which

they had lost. The native valor of the French nobility, heightened to an enthusiastic confidence by a supposed interposition of Heaven in their behalf, conducted in the field by skilful leaders, and directed in the cabinet by a prudent monarch, was exerted with such vigor and success, during this favorable juncture, as not only wrested from the English their new conquests, but stripped them of their ancient possessions in France, and reduced them within the narrow precincts of Calais, and its petty territory.

As soon as so many considerable provinces were reunited to their dominions, the kings of France, conscious of this acquisition of strength, began to form bolder schemes of interior policy, as well as of foreign operations. They immediately became formidable to their neighbors, who began to fix their attention on their measures and motions, the importance of which they fully perceived. From this era, France, possessed of the advantages which it derives from the situation and contiguity of its territories, as well as from the number and valor of its people, rose to new influence in Europe, and was the first power in a condition to give alarm to the jealousy or fears of the states around it.

Nor was France indebted for this increase of importance merely to the reunion of the provinces which had been torn from it. A circumstance attended the recovery of these, which, though less considerable, and less observed, contributed not a little to give additional vigor and decision to all the

efforts of that monarchy. During the obstinate struggles between France and England, all the defects of the military system under the feudal government were sensibly felt. A war of long continuance languished, when carried on by troops bound and accustomed to keep the field only for a short time. Armies composed chiefly of heavy-armed cavalry were unfit either for the defence or the attack of the many towns and castles which it became necessary to guard or to reduce. In order to obtain such permanent and effective force as became requisite during these lengthened contests, the kings of France took into their pay considerable bands of mercenary soldiers, levied sometimes among their own subjects, and sometimes in foreign countries. But as the feudal policy provided no sufficient fund for such extraordinary service, these adventurers were dismissed at the close of every campaign, or upon any prospect of accommodation; and having been little accustomed to the restraints of discipline, they frequently turned their arms against the country which they had been hired to defend, and desolated it with cruelty not inferior to that of its foreign enemies.

A body of troops kept constantly on foot, and regularly trained to military subordination, would have supplied what was wanting in the feudal constitution, and have furnished princes with the means of executing enterprises to which they were then unequal. Such an establishment, however, was so repugnant to the genius of feudal policy,

and so incompatible with the privileges and pretensions of the nobility, that during several centuries no monarch was either so bold or so powerful as to venture on any step towards introducing it. At last, Charles VII., availing himself of the reputation which he had acquired by his successes against the English, and taking advantage of the impressions of terror which such a formidable enemy had left upon the minds of his subjects, executed that which his predecessors durst not attempt. Under pretence of having always ready a force sufficient to defend the kingdom against any sudden invasion of the English, he, at the time when he disbanded his other troops, retained under arms a body of nine thousand cavalry and of sixteen thousand infantry. He appropriated funds for the regular payment of these; he stationed them in different places of the kingdom, according to his pleasure, and appointed the officers who commanded and disciplined them. The prime nobility courted this service, in which they were taught to depend on their sovereign, to execute his orders, and to look up to him as the judge and rewarder of their merit. The feudal militia, composed of the vassals whom the nobles could call out to follow their standard, as it was in no degree comparable to a body of soldiers regularly trained to war, sunk gradually in reputation. The strength of an army was no longer estimated solely by the number of cavalry which served in it. From the time that gunpowder was invented, and the use of cannon in the field became general, horsemen

cased in complete armor lost all the advantages which gave them the pre-eminence over other soldiers. The helmet, the shield, and the breastplate, which resisted the arrow or the spear, no longer afforded them security against these new instruments of destruction. The service of infantry rose again into esteem, and victories were gained, and conquests made, chiefly by their efforts. The nobles and their military tenants, though sometimes summoned to the field, according to ancient form, were considered as an encumbrance upon the troops with which they acted, and were viewed with contempt by soldiers accustomed to the vigorous and steady operations of regular service.

Thus the regulations of Charles VII., by establishing the first standing army known in Europe, occasioned an important revolution in its affairs and policy. By taking from the nobles the sole direction of the national military force, which had raised them to such high authority and importance, a deep wound was given to the feudal aristocracy, in that part where its power seemed to be most complete.

France, by forming this body of regular troops, at a time when there was hardly a squadron or company kept in constant pay in any other part of Europe, acquired such advantages over its neighbors, either in attack or defence, that self-preservation made it necessary for them to imitate its example. Mercenary troops were introduced into all the considerable kingdoms on the continent. They

gradually became the only military force that was employed or trusted. It has long been the chief object of policy to increase and to support them. It has long been the great aim of princes and ministers to discredit and to annihilate all other means of national activity or defence.

As the kings of France got the start of other powers in establishing a military force in their dominions, which enabled them to carry on foreign operations with more vigor, and to greater extent, so they were the first who effectually broke the feudal aristocracy, and humbled the great vassals of the crown, who, by their exorbitant power, had long circumscribed the royal prerogative within very narrow limits, and had rendered all the efforts of the monarchs of Europe inconsiderable. Many things concurred to undermine, gradually, the power of the feudal aristocracy in France. The wealth and property of the nobility were greatly impaired during the long wars which the kingdom was obliged to maintain with the English. The extraordinary zeal with which they exerted themselves in defence of their country against its ancient enemies, exhausted entirely the fortunes of some great families. As almost every province in the kingdom was, in its turn, the seat of war, the lands of others were exposed to the depredations of the enemy, were ravaged by the mercenary troops which their sovereigns hired occasionally, but could not pay, or were desolated with rage still more destructive by the peasants, in different insurrections. At the

same time, the necessities of government having forced their kings upon the desperate expedient of making great and sudden alterations in the current coin of the kingdom, the fines, quitrents, and other payments fixed by ancient custom, sunk much in value, and the revenues of a fief were reduced far below the sum which it had once yielded. During their contests with the English, in which a generous nobility courted every station where danger appeared, or honor could be gained, many families of note became extinct, and their fiefs were reunited to the crown. Other fiefs, in a long course of years, fell to female heirs, and were divided among them, were diminished by profuse donations to the Church, or were broken and split by the succession of remote collateral heirs.[1]

Encouraged by these manifest symptoms of decline in that body which he wished to depress, Charles VII., during the first interval of peace with England, made several efforts towards establishing the regal prerogative on the ruins of the aristocracy. But his obligations to the nobles were so many, as well as recent, and their services in recovering the kingdom so splendid, as rendered it necessary for him to proceed with moderation and caution. Such, however, was the authority which the crown had acquired by the progress of its arms against the English, and so much was the power of the nobility diminished, that, without any opposition, he soon made innovations of great consequence in the con-

[1] Boulainvilliers, Histoire de Gouvernement de France, Lettre xii.

stitution. He not only established that formidable body of regular troops, which has been mentioned, but he was the first monarch of France who, by his royal edict, without the concurrence of the states-general of the kingdom, levied an extraordinary subsidy on his people. He prevailed likewise with his subjects to render several taxes perpetual, which had formerly been imposed occasionally, and exacted during a short time. By means of all these innovations, he acquired such an increase of power, and extended his prerogative so far beyond its ancient limits, that, from being the most dependent prince who had ever sat upon the throne of France, he came to possess, during the latter years of his reign, a degree of authority which none of his predecessors had enjoyed for several ages.[2]

That plan of humbling the nobility which Charles began to execute, his son Louis XI. carried on with a bolder spirit, and with greater success. Louis was formed by nature to be a tyrant; and at whatever period he had been called to ascend the throne, his reign must have abounded with schemes to oppress his people, and to render his own power absolute. Subtle, unfeeling, cruel; a stranger to every principle of integrity, and regardless of decency, he scorned all the restraints which a sense of honor, or the desire of fame, imposes even upon ambitious men. Sagacious, at the same time, to discern what he deemed his true interest, and influenced by that

[2] Histoire de France par Velly et Villaret, tom. xv. 331, &c. 389; tom. xvi. 324. Variations de la Monarchie Françoise, tom. iii. 162.

alone, he was capable of pursuing it with a persevering industry, and of adhering to it with a systematic spirit, from which no object could divert, and no danger could deter him.

The maxims of his administration were as profound as they were fatal to the privileges of the nobility. He filled all the departments of government with new men, and often with persons whom he called from the lowest as well as the most despised functions in life, and raised at pleasure to stations of great power or trust. These were his only confidants, whom he consulted in forming his plans, and to whom he committed the execution of them; while the nobles, accustomed to be the companions, the favorites, and the ministers of their sovereigns, were treated with such studied and mortifying neglect, that, if they would not submit to follow a court in which they appeared without any shadow of their ancient power, they were obliged to retire to their castles, where they remained unemployed and forgotten. Not satisfied with having rendered the nobles of less consideration, by taking out of their hands the sole direction of affairs, Louis added insult to neglect; and, by violating their most valuable privileges, endeavored to degrade the order, and to reduce the members of it to the same level with other subjects. Persons of the highest rank among them, if so bold as to oppose his schemes, or so unfortunate as to awaken the jealousy of his capricious temper, were persecuted with rigor, from which all who belonged to the order of nobility had hitherto

been exempt; they were tried by judges who had no right to take cognizance of their actions, and were subjected to torture, or condemned to an ignominious death, without regard to their birth or condition. The people, accustomed to see the blood of the most illustrious personages shed by the hands of the common executioner, to behold them shut up in dungeons, and carried about in cages of iron, began to view the nobility with less reverence than formerly, and looked up with terror to the royal authority, which seemed to have humbled or annihilated every other power in the kingdom.

At the same time, Louis, being afraid that oppression might rouse the nobles, whom the rigor of his government had intimidated, or that self-preservation might at last teach them to unite, dexterously scattered among them the seeds of discord, and industriously fomented those ancient animosities between the great families, which the spirit of jealousy and emulation, natural to the feudal government, had originally kindled and still kept alive. To accomplish this, all the arts of intrigue, all the mysteries and refinements of his fraudulent policy, were employed, and with such success, that at a juncture which required the most strenuous efforts, as well as the most perfect union, the nobles never acted, except during one short sally of resentment at the beginning of his reign, either with vigor or in concert.

As he stripped the nobility of their privileges, he

added to the power and prerogative of the crown. In order to have at command such a body of soldiers as might be sufficient to crush any force that his disaffected subjects could draw together, he not only kept on foot the regular troops which his father had raised, but, besides augmenting their number considerably, he took into his pay six thousand Swiss, at that time the best disciplined and most formidable infantry in Europe.[3] From the jealousy natural to tyrants, he confided in these foreign mercenaries, as the most devoted instruments of oppression, and the most faithful guardians of the power which he had usurped. That they might be ready to act on the shortest warning, he, during the latter years of his reign, kept a considerable body of them encamped in one place.[4]

Great funds were requisite, not only to defray the expense of this additional establishment, but to supply the sums employed in the various enterprises which the restless activity of his genius prompted him to undertake. But the prerogative that his father had assumed of levying taxes without the concurrence of the states-general, which he was careful not only to retain, but to extend, enabled him to provide, in some measure, for the increasing charges of government.

What his prerogative, enlarged as it was, could not furnish, his address procured. He was the first

[3] Mém. de Comines, tom. i. 367. Dan. Hist. de la Milice Françoise, tom. i. 182.

[4] Mém. de Comines, tom. i. 381.

monarch in Europe who discovered the method of managing those great assemblies, in which the feudal policy had vested the power of granting subsidies and of imposing taxes. He first taught other princes the fatal art of beginning their attack on public liberty, by corrupting the source from which it should flow. By exerting all his power and address in influencing the election of representatives, by bribing or overawing the members, and by various changes which he artfully made in the form of their deliberations, Louis acquired such entire direction of these assemblies, that, from being the vigilant guardians of the privileges and property of the people, he rendered them tamely subservient towards promoting the most odious measures of his reign.[5] As no power remained to set bounds to his exactions, he not only continued all the taxes imposed by his father, but he made great additions to them, which amounted to a sum that appeared astonishing to his contemporaries.[6]

Nor was it the power alone or wealth of the crown that Louis increased; he extended its territories by acquisitions of various kinds. He got possession of Rousillon by purchase; Provence was conveyed to him by the will of Charles de Anjou; and upon the death of Charles the Bold, he seized with a strong hand Burgundy and Artois, which

[5] Mém. de Comin. tom. i. 136. Chron. Scandal. ibid. tom. ii. p. 71.

[6] Mém. de Comin. tom. i. 334. Charles VII. levied taxes to the amount of 1,800,000 francs; Louis XI. raised 4,700,000. The former had in pay 9,000 cavalry and 16,000 infantry. The latter augmented the cavalry to 15,000, and the infantry to 25,000. Ibid. tom. i. 384.

had belonged to that prince. Thus, during the course of a single reign, France was formed into one compact kingdom, and the steady, unrelenting policy of Louis XI. not only subdued the haughty spirit of the feudal nobles, but established a species of government scarcely less absolute or less terrible than Eastern despotism.

But fatal as his administration was to the liberties of his subjects, the authority which he acquired, the resources of which he became master, and his freedom from restraint in concerting his plans as well as in executing them, rendered his reign active and enterprising. Louis negotiated in all the courts of Europe; he observed the motions of all his neighbors; he engaged, either as principal or as an auxiliary, in every great transaction; his resolutions were prompt, his operations vigorous; and upon every emergence he could call forth into action the whole force of his kingdom. From the era of his reign, the kings of France, no longer fettered and circumscribed at home by a jealous nobility, have exerted themselves more abroad, have formed more extensive schemes of foreign conquests, and have carried on war with a spirit and vigor long unknown in Europe.

The example which Louis set was too inviting not to be imitated by other princes. Henry VII., as soon as he was seated on the throne of England, formed the plan of enlarging his own prerogative, by breaking the power of the nobility. The circumstances under which he undertook to execute

it were less favorable than those which induced Charles VII. to make the same attempt; and the spirit with which he conducted it was very different from that of Louis XI. Charles, by the success of his arms against the English, by the merit of having expelled them out of so many provinces, had established himself so firmly in the confidence of his people, as encouraged him to make bold encroachments on the ancient constitution. The daring genius of Louis broke through every barrier, and endeavored to surmount or to remove every obstacle that stood in his way. But Henry held the sceptre by a disputed title; a popular faction was ready every moment to take arms against him; and after long civil wars, during which the nobility had often displayed their power in creating and deposing kings, he felt that the regal authority had been so much relaxed, and that he entered into possession of a prerogative so much abridged, as rendered it necessary to carry on his measures deliberately, and without any violent exertion. He endeavored to undermine that formidable structure, which he durst not attack by open force. His schemes, though cautious and slow in their operation, were well concerted, and productive in the end of great effects. By his laws, permitting the barons to break the entails of their estates, and expose them to sale; by his regulations to prevent the nobility from keeping in their service those numerous bands of retainers, which rendered them formidable and turbulent; by favoring the rising

power of the commons; by encouraging population, agriculture, and commerce; by securing to his subjects, during a long reign, the enjoyment of the blessings which flow from the arts of peace; by accustoming them to an administration of government, under which the laws were executed with steadiness and vigor, — he made imperceptibly considerable alterations in the English constitution, and transmitted to his successor authority so extensive, as rendered him one of the most absolute monarchs in Europe, and capable of the greatest and most vigorous efforts.

In Spain, the union of all its crowns by the marriage of Ferdinand and Isabella; the glory that they acquired by the conquest of Granada, which brought the odious dominion of the Moors to a period; the command of the great armies which it had been necessary to keep long on foot, in order to accomplish this; the wisdom and steadiness of their administration; and the address with which they availed themselves of every incident that occurred to humble the nobility, and to extend their own prerogative, — conspired in raising these monarchs to such eminence and authority, as none of their predecessors had ever enjoyed. Though several causes, which shall be explained in another place, prevented their attaining the same powers with the kings of France and England, and preserved the feudal constitution longer entire in Spain, their great abilities supplied the defects of their prerogative, and improved with such dex-

terity all the advantages which they possessed, that Ferdinand carried on his foreign operations, which were very extensive, with extraordinary vigor and effect.

While these princes were thus enlarging the boundaries of prerogative, and taking such steps towards rendering their kingdoms capable of acting with union and force, events occurred, which called them forth to exert the new powers which they had acquired. These engaged them in such a series of enterprises and negotiations, that the affairs of all the considerable nations in Europe came to be insensibly interwoven with each other; and a great political system was gradually formed, which grew to be an object of universal attention.

The first event which merits notice, on account of its influence in producing this change in the state of Europe, was the marriage of the daughter of Charles the Bold, the sole heiress of the house of Burgundy. For some years before her father's death, she had been considered as the apparent successor to his territories, and Charles had made proposals of marrying her to several different princes, with a view of alluring them, by that offer, to favor the schemes which his restless ambition was continually forming.

This rendered the alliance with her an object of general attention; and all the advantages of acquiring possession of her territories, the most opulent at that time, and the best cultivated, of any on this side of the Alps, were perfectly understood.

As soon, then, as the untimely death of Charles opened the succession, the eyes of all the princes in Europe were turned towards Mary, and they felt themselves deeply interested in the choice which she was about to make of the person on whom she would bestow that rich inheritance.

Louis XI., from whose kingdom several of the provinces which she possessed had been dismembered, and whose dominions stretched along the frontier of her territories, had every inducement to court her alliance. He had, likewise, a good title to expect the favorable reception of any reasonable proposition he should make, with respect to the disposal of a princess who was the vassal of his crown, and descended from the royal blood of France. There were only two propositions, however, which he could make with propriety. The one was the marriage of the dauphin, the other that of the count of Angouleme, a prince of the blood, with the heiress of Burgundy. By the former, he would have annexed all her territories to his crown, and have rendered France at once the most respectable monarchy in Europe. But the great disparity of age between the two parties, Mary being twenty and the dauphin only eight years old, the avowed resolution of the Flemings not to choose a master possessed of such power as might enable him to form schemes dangerous to their liberties, together with their dread of falling under the odious and oppressive government of Louis, were obstacles in the way of executing this

plan, which it was vain to think of surmounting. By the latter, the accomplishment of which might have been attained with ease, Mary having discovered some inclination to a match with the count of Angouleme,[7] Louis would have prevented the dominions of the house of Burgundy from being conveyed to a rival power, and in return for such a splendid establishment for the count of Angouleme, he must have obtained, or would have extorted from him, concessions highly beneficial to the crown of France. But Louis had been accustomed so long to the intricacies of a crooked and insidious policy, that he could not be satisfied with what was obvious and simple; and was so fond of artifice and refinement, that he came to consider these rather as an ultimate object, than merely as the means of conducting affairs. From this principle, no less than from his unwillingness to aggrandize any of his own subjects, or from his desire of oppressing the house of Burgundy, which he hated, he neglected the course which a prince less able and artful would have taken, and followed one more suited to his own genius.

He proposed to render himself, by force of arms, master of those provinces which Mary held of the crown of France, and even to push his conquests into her other territories, while he amused her with insisting continually on the impracticable match with the dauphin. In prosecuting this plan, he displayed wonderful talents and industry, and ex-

[7] Mém. de Comines, i. 358.

hibited such scenes of treachery, falsehood, and cruelty, as are amazing even in the history of Louis XI. Immediately upon the death of Charles, he put his troops in motion, and advanced towards the Netherlands. He corrupted the leading men in the provinces of Burgundy and Artois, and seduced them to desert their sovereign. He got admission into some of the frontier towns by bribing the governors; the gates of others were opened to him in consequence of his intrigues with the inhabitants. He negotiated with Mary; and, in order to render her odious to her subjects, he betrayed to them her most important secrets. He carried on a private correspondence with the two ministers whom she chiefly trusted, and then communicated the letters which he had received from them to the states of Flanders, who, enraged at their perfidy, brought them immediately to trial, tortured them with extreme cruelty, and, unmoved by the tears and entreaties of their sovereign, who knew and approved of all that the ministers had done, they beheaded them in her presence.[8]

While Louis, by his conduct, unworthy of a great monarch, was securing the possession of Burgundy, Artois, and the towns on the Somme, the states of Flanders carried on a negotiation with the Emperor Frederic III., and concluded a treaty of marriage between their sovereign and his son Maximilian, archduke of Austria. The illustrious birth of that prince, as well as the high dignity of which he had

[8] Mém. de Comines, liv. v. chap. 15, p. 309, &c

the prospect, rendered the alliance honorable for Mary, while, from the distance of his hereditary territories, and the scantiness of his revenues, his power was so inconsiderable, as did not excite the jealousy or fear of the Flemings. [1477.]

Thus Louis, by the caprice of his temper, and the excess of his refinements, put the house of Austria in possession of this noble inheritance. By this acquisition, the foundation of the future grandeur of Charles V was laid; and he became master of those territories, which enabled him to carry on his most formidable and decisive operations against France. Thus, too, the same monarch who first united the interior force of France, and established it on such a footing as to render it formidable to the rest of Europe, contributed, far contrary to his intention, to raise up a rival power, which, during two centuries, has thwarted the measures, opposed the arms, and checked the progress of his successors.

The next event of consequence in the fifteenth century was the expedition of Charles VIII. into Italy. This occasioned revolutions no less memorable; produced alterations, both in the military and political system, which were more immediately perceived; roused the states of Europe to bolder efforts; and blended their affairs and interests more closely together. The mild administration of Charles, a weak but generous prince, seems to have revived the spirit and genius of the French nation, which the rigid despotism of Louis XI., his father, had depressed, and almost extinguished.

The ardor for military service, natural to the French nobility, returned, and their young monarch was impatient to distinguish his reign by some splendid enterprise. While he was uncertain towards what quarter he should turn his arms, the solicitations and intrigues of an Italian politician, no less infamous on account of his crimes than eminent for his abilities, determined his choice. Ludovico Sforza, having formed the design of deposing his nephew, the duke of Milan, and of placing himself on the ducal throne, was so much afraid of a combination of the Italian powers to oppose this measure, and to support the injured prince, with whom most of them were connected by blood or alliance, that he saw the necessity of securing the aid of some able protector. The king of France was the person to whom he applied; and without disclosing his own intentions, he labored to prevail with him to march into Italy, at the head of a powerful army, in order to seize the crown of Naples, to which Charles had pretensions as heir of the house of Anjou. The right to that kingdom, claimed by the Angevin family, had been conveyed to Louis XI. by Charles of Anjou, count of Mayne and Provence. But that sagacious monarch, though he took immediate possession of those territories of which Charles was really master, totally disregarded his ideal title to a kingdom, over which another prince reigned in tranquillity; and uniformly declined involving himself in the labyrinth of Italian politics. His son, more adventurous, or more incon-

siderate, embarked eagerly in this enterprise; and, contemning all the remonstrances of his most experienced counsellors, prepared to carry it on with the utmost vigor. [1494.]

The power which Charles possessed was so great, that he reckoned himself equal to this ardous undertaking. His father had transmitted to him such an ample prerogative, as gave him the entire command of his kingdom. He himself had added considerably to the extent of his dominions, by his prudent marriage with the heiress of Bretagne, which rendered him master of that province, the last of the great fiefs that remained to be annexed to the crown. He soon assembled forces which he thought sufficient; and so impatient was he to enter on his career as a conqueror, that, sacrificing what was real for what was chimerical, he restored Rousillon to Ferdinand, and gave up part of his father's acquisitions in Artois to Maximilian, with a view of inducing these princes not to molest France while he was carrying on his operations in Italy.

But so different were the efforts of the states of Europe in the fifteenth century from those which we shall behold in the course of this history, that the army with which Charles undertook this great enterprise did not exceed twenty thousand men. The train of artillery, however, the ammunition, and warlike stores of every kind provided for its use, were so considerable, as to bear some resemblance to the immense apparatus of modern war.[9]

[9] Mézéray, Hist. tom. ii. 777.

When the French entered Italy, they met with nothing able to resist them. The Italian powers having remained, during a long period, undisturbed by the invasion of any foreign enemy, had formed a system with respect to their affairs, both in peace and war, peculiar to themselves. In order to adjust the interests, and balance the power, of the different states into which Italy was divided, they were engaged in perpetual and endless negotiations with each other, which they conducted with all the subtlety of a refining and deceitful policy. Their contests in the field, when they had recourse to arms, were decided in mock battles, by innocent and bloodless victories. Upon the first appearance of the danger which now impended, they had recourse to the arts which they had studied, and employed their utmost skill in intrigue in order to avert it. But this proving ineffectual, their bands of effeminate mercenaries, the only military force that remained in the country, being fit only for the parade of service, were terrified at the aspect of real war, and shrunk at its approach. The impetuosity of the French valor appeared to them irresistible. Florence, Pisa, and Rome opened their gates as the French army advanced. The prospect of this dreadful invasion struck one king of Naples with such panic terror, that he died (if we may believe historians) of the fright. Another abdicated his throne from the same pusillanimous spirit. A third fled out of his dominions, as soon as the enemy appeared on the Neapolitan frontiers. Charles, after

marching thither from the bottom of the Alps, with as much rapidity, and almost as little opposition, as if he had been on a progress through his own dominions, took quiet possession of the throne of Naples, and intimidated or gave law to every power in Italy.

Such was the conclusion of an expedition, that must be considered as the first great exertion of those new powers which the princes of Europe had acquired and now began to exercise. Its effects were no less considerable, than its success had been astonishing. The Italians, unable to resist the impression of the enemy who broke in upon them, permitted him to hold on his course undisturbed. They quickly perceived that no single power, which they could rouse to action, was an equal match for a monarch who ruled over such extensive territories, and was at the head of such a martial people; but that a confederacy might accomplish what the separate members of it durst not attempt. To this expedient, the only one that remained to deliver or to preserve them from the yoke, they had recourse. While Charles inconsiderately wasted his time at Naples in festivals and triumphs on account of his past successes, or was fondly dreaming of future conquests in the East, to the empire of which he now aspired, they formed against him a powerful combination of almost all the Italian states, supported by the Emperor Maximilian, and Ferdinand, king of Aragon. The union of so many powers, who suspended or forgot all their particular animosities,

that they might act in concert against an enemy who had become formidable to them all, awakened Charles from his thoughtless security. He saw now no prospect of safety but in returning to France. An army of thirty thousand men, assembled by the allies, was ready to obstruct his march; and though the French, with a daring courage which more than countervailed their inferiority in number, broke through that great body, and gained a victory, which opened to their monarch a safe passage into his own territories, he was stripped of all his conquests in Italy in as short a time as it had taken to acquire them; and the political system in that country resumed the same appearance as before his invasion.

The sudden and decisive effect of this confederacy seems to have instructed the princes and statesmen of Italy as much as the eruption of the French had disconcerted and alarmed them. They had extended, on this occasion, to the affairs of Europe, the maxims of that political science which had hitherto been applied only to regulate the operations of the petty states in their own country. They had discovered the method of preventing any monarch from rising to such a degree of power as was inconsistent with the general liberty; and had manifested the importance of attending to that great secret in modern policy, the preservation of a proper distribution of power among all the members of the system into which the states of Europe are formed. During all the wars of which Italy from that time

was the theatre, and amidst the hostile operations which the imprudence of Louis XII. and the ambition of Ferdinand of Aragon carried on in that country, with little interruption, from the close of the fifteenth century to that period at which the subsequent history commences, the maintaining a proper balance of power between the contending parties became the great object of attention to the statesmen of Italy. Nor was the idea confined to them. Self-preservation taught other powers to adopt it. It grew to be fashionable and universal. From this era we can trace the progress of that intercourse between nations, which has linked the powers of Europe so closely together; and can discern the operations of that provident policy, which, during peace, guards against remote and contingent dangers; and, in war, has prevented rapid and destructive conquests.

This was not the only effect of the operations which the great powers of Europe carried on in Italy. They contributed to render general such a change as the French had begun to make in the state of their troops; and obliged all the princes, who appeared on this new theatre of action, to put the military force of their kingdoms on an establishment similar to that of France. When the seat of war came to be remote from the countries which maintained the contest, the service of the feudal vassals ceased to be of any use; and the necessity of employing soldiers regularly trained to arms, and kept in constant pay, came at once to be evident.

When Charles VIII. marched into Italy, his cavalry was entirely composed of those companies of gendarmes embodied by Charles VII. and continued by Louis XI.; his infantry consisted partly of Swiss, hired of the Cantons, and partly of Gascons, armed and disciplined after the Swiss model. To these Louis XII. added a body of Germans, well known in the wars of Italy by the name of the black bands. But neither of these monarchs made any account of the feudal militia, or ever had recourse to that military force which they might have commanded, in virtue of the ancient institutions in their kingdom. Maximilian and Ferdinand, as soon as they began to act in Italy, employed similar instruments, and trusted the execution of their plans entirely to mercenary troops.

This innovation in the military system was quickly followed by another, which the custom of employing Swiss in the Italian wars was the occasion of introducing. The arms and discipline of the Swiss were different from those of other European nations. During their long and violent struggles in defence of their liberties against the house of Austria, whose armies, like those of other considerable princes, consisted chiefly of heavy-armed cavalry, the Swiss found that their poverty, and the small number of gentlemen residing in their country, at that time barren and ill cultivated, put it out of their power to bring into the field any body of horse capable of facing the enemy. Necessity compelled them to place all their confidence in in-

fantry; and in order to render it capable of withstanding the shock of cavalry, they gave the soldiers breastplates and helmets as defensive armor; together with long spears, halberds, and heavy swords, as weapons of offence. They formed them into large battalions, ranged in deep and close array, so that they could present on every side a formidable front to the enemy.[10] The men-at-arms could make no impression on the solid strength of such a body. It repulsed the Austrians in all their attempts to conquer Switzerland. It broke the Burgundian gendarmerie, which was scarcely inferior to that of France, either in number or reputation; and when first called to act in Italy, it bore down, by its irresistible force, every enemy that attempted to oppose it. These repeated proofs of the decisive effect of infantry, exhibited on such conspicuous occasions, restored that service to reputation, and gradually re-established the opinion, which had been long exploded, of its superior importance in the operations of war. But the glory which the Swiss had acquired, having inspired them with such high ideas of their own prowess and consequence, as frequently rendered them mutinous and insolent, the princes who employed them became weary of depending on the caprice of foreign mercenaries, and began to turn their attention towards the improvement of their national infantry.

The German powers, having the command of men whom nature has endowed with that steady

[10] Machiavel's Art of War, b. ii. chap. ii. p. 451

courage and persevering strength which form them to be soldiers, soon modelled their troops in such a manner, that they vied with the Swiss both in discipline and valor.

The French monarchs, though more slowly, and with greater difficulty, accustomed the impetuous spirit of their people to subordination and discipline; and were at such pains to render their national infantry respectable, that as early as the reign of Louis XII. several gentlemen of high rank had so far abandoned their ancient ideas, as to condescend to enter into that service.[11]

The Spaniards, whose situation made it difficult to employ any other than their national troops in the southern parts of Italy, which was the chief scene of their operations in that country, not only adopted the Swiss discipline, but improved upon it, by mingling a proper number of soldiers, armed with heavy muskets, in their battalions; and thus formed that famous body of infantry, which, during a century and a half, was the admiration and terror of all Europe. The Italian states gradually diminished the number of their cavalry, and, in imitation of their more powerful neighbors, brought the strength of their armies to consist in foot-soldiers. From this period the nations of Europe have carried on war with forces more adapted to every species of service, more capable of acting in every country, and better fitted both for making conquests and for preserving them.

[11] Brantome, tom. x. p. 18. Mém. de Fleuranges, 143.

As their efforts in Italy led the people of Europe to these improvements in the art of war, they gave them likewise the first idea of the expense with which it is accompanied when extensive or of long continuance, and accustomed every nation to the burden of such impositions as are necessary for supporting it. While the feudal policy subsisted in full vigor, while armies were composed of military vassals called forth to attack some neighboring power, and to perform, in a short campaign, the services which they owed to their sovereign, the expense of war was extremely moderate. A small subsidy enabled a prince to begin and to finish his greatest military operations. But when Italy became the theatre on which the powers of Europe contended for superiority, the preparations requisite for such a distant expedition, the pay of armies kept constantly on foot, their subsistence in a foreign country, the sieges to be undertaken, and the towns to be defended, swelled the charges of war immensely, and, by creating demands unknown in less active times, multiplied taxes in every kingdom. The progress of ambition, however, was so rapid, and princes extended their operations so fast, that it was impossible at first to establish funds proportional to the increase of expense which these occasioned. When Charles VIII. invaded Naples, the sums requisite for carrying on that enterprise so far exceeded those which France had been accustomed to contribute for the support of government, that, before he reached the

frontiers of Italy, his treasury was exhausted, and the domestic resources, of which his extensive prerogative gave him the command, were at an end. As he durst not venture to lay any imposition on his people, oppressed already with the weight of unusual burdens, the only expedient that remained was to borrow of the Genoese as much money as might enable him to continue his march. But he could not obtain a sufficient sum, without consenting to pay annually the exorbitant interest of forty-two livres for every hundred that he received.[12] We may observe the same disproportion between the efforts and revenues of other princes, his contemporaries. From this period, taxes went on increasing; and during the reign of Charles V such sums were levied in every state, as would have appeared enormous at the close of the fifteenth century, and gradually prepared the way for the still more exorbitant exactions of modern times.

The last transaction, previous to the reign of Charles V., that merits attention on account of its influence upon the state of Europe, is the league of Cambray. To humble the republic of Venice, and to divide its territories, was the object of all the powers who united in this confederacy. The civil constitution of Venice, established on a firm basis, had suffered no considerable alteration for several centuries; during which the senate conducted its affairs by maxims of policy no less prudent than vigorous, and adhered to these with

[12] Mém. de Comines, lib. vii. c. 5, p. 440.

an uniform, consistent spirit, which gave that commonwealth great advantage over other states, whose views and measures changed as often as the form of their government, or the persons who administered it. By these unintermitted exertions of wisdom and valor, the Venetians enlarged the dominions of their commonwealth, until it became the most considerable power in Italy; while their extensive commerce, the useful and curious manufactures which they carried on, together with the large share which they had acquired of the lucrative commerce with the East, rendered Venice the most opulent state in Europe.

The power of the Venetians was the object of terror to their Italian neighbors. Their wealth was viewed with envy by the greatest monarchs, who could not vie with many of their private citizens in the magnificence of their buildings, in the richness of their dress and furniture, or in splendor and elegance of living.[13] Julius II., whose ambition was superior, and his abilities equal, to those of any pontiff who ever sat on the papal throne, conceived the idea of this league against the Venetians, and endeavored, by applying to those passions which I have mentioned, to persuade other princes to join in it. By working upon the fears of the Italian powers, and upon the avarice of several monarchs beyond the Alps, he induced them, in concurrence with other causes, which it is not my province to explain, to form

[13] Heliani Oratio apud Goldastum in Polit. Imperial. p. 980.

one of the most powerful confederacies that Europe had ever beheld, against those haughty republicans.

The emperor, the king of France, the king of Aragon, and the pope, were principals in the league of Cambray, to which almost all the princes of Italy acceded, the least considerable of them hoping for some share in the spoils of a state, which they deemed to be now devoted to destruction. The Venetians might have diverted this storm, or have broken its force; but, with a presumptuous rashness to which there is nothing similar in the course of their history, they waited its approach. The impetuous valor of the French rendered ineffectual all their precautions for the safety of the republic; and the fatal battle of Ghiarraddada entirely ruined the army on which they relied for defence. Julius seized all the towns which they held in the ecclesiastical territories. Ferdinand re-annexed the towns of which they had got possession on the coast of Calabria to his Neapolitan dominions. Maximilian, at the head of a powerful army, advanced towards Venice on the one side. The French pushed their conquests on the other. The Venetians, surrounded by so many enemies, and left without one ally, sunk from the height of presumption to the depths of despair; abandoned all their territories on the continent; and shut themselves up in their capital, as their last refuge, and the only place which they hoped to preserve.

This rapid success, however, proved fatal to the confederacy. The members of it, whose union continued while they were engaged in seizing their prey, began to feel their ancient jealousies and animosities revive, as soon as they had a prospect of dividing it. When the Venetians observed these symptoms of distrust and alienation, a ray of hope broke in upon them; the spirit natural to their counsels returned; they resumed such wisdom and firmness, as made some atonement for their former imprudence and dejection; they recovered part of the territory which they had lost; they appeased the pope and Ferdinand by well-timed concessions in their favor; and at length dissolved the confederacy, which had brought their commonwealth to the brink of ruin.

Julius, elated with beholding the effects of a league which he himself had planned, and imagining that nothing was too arduous for him to undertake, conceived the idea of expelling every foreign power out of Italy, and bent all the force of his mind towards executing a scheme so well suited to his enterprising genius. He directed his first attack against the French, who, on many accounts, were more odious to the Italians than any of the foreigners who had acquired dominion in their country. By his activity and address, he prevailed on most of the powers who had joined in the league of Cambray to turn their arms against the king of France, their former ally; and engaged Henry VIII., who had lately ascended the throne

of England, to favor their operations by invading France. Louis XII. resisted all the efforts of this formidable and unexpected confederacy with undaunted fortitude. Hostilities were carried on, during several campaigns, in Italy, on the frontiers of Spain, and in Picardy, with alternate success. Exhausted, at length, by the variety as well as extent of his operations; unable to withstand a confederacy which brought against him superior force, conducted with wisdom and acting with perseverance; Louis found it necessary to conclude separate treaties of peace with his enemies; and the war terminated with the loss of everything which the French had acquired in Italy, except the castle of Milan and a few inconsiderable towns in that duchy.

The various negotiations carried on during this busy period, and the different combinations formed among powers hitherto little connected with each other, greatly increased that intercourse among the nations of Europe, which I have mentioned as one effect of the events in the fifteenth century; while the greatness of the objects at which different nations aimed, the distant expeditions which they undertook, as well as the length and obstinacy of the contest in which they engaged, obliged them to exert themselves with a vigor and perseverance unknown in the preceding ages.

Those active scenes which the following history will exhibit, as well as the variety and importance of those transactions which distinguish the period

to which it extends, are not to be ascribed solely to the ambition, to the abilities, or to the rivalship of Charles V and of Francis I. The kingdoms of Europe had arrived at such a degree of improvement in the internal administration of government, and princes had acquired such command of the national force which was to be exerted in foreign wars, that they were in a condition to enlarge the sphere of their operations, to multiply their claims and pretensions, and to increase the vigor of their efforts. Accordingly, the sixteenth century opened with the certain prospect of its abounding in great and interesting events.

SECTION III.

VIEW OF THE POLITICAL CONSTITUTION OF THE PRINCIPAL STATES IN EUROPE, AT THE COMMENCEMENT OF THE SIXTEENTH CENTURY.

Italy at the Beginning of the Sixteenth Century. — The Papal Power. — Alexander VI. and Julius II. — Defects in Ecclesiastical Governments. — Venice; its Rise and Progress; its Naval Power and its Commerce. — Florence. — Naples and Sicily. — Contest for its Crown. — Duchy of Milan. — Ludovico Sforza. — Spain; conquered by the Vandals and by the Moors; gradually re-conquered by the Christians. — Marriage of Ferdinand and Isabella. — The Royal Prerogative. — Constitution of Aragon and of Castile. — Internal Disorders. — "The Holy Brotherhood." — France; its Constitution and Government. — The Power of its Early Kings. — Government becomes purely Monarchical, though restrained by the Nobles and the Parliaments. — The German Empire. — Power of the Nobles and of the Clergy. — Contests between the Popes and the Emperors. — Decline of Imperial Authority. — Total Change of Government. — Maximilian. — The real Power and Revenues of the Emperors, contrasted with their Pretensions. — Complication of Difficulties. — Origin of the Turkish Empire; its Character. — The Janizaries. — Solyman.

HAVING thus enumerated the principal causes and events, the influence of which was felt in every part of Europe, and contributed either to improve internal order and police in its various states, or to enlarge the sphere of their activity, by giving them more entire command of the force with which foreign operations are carried on;

nothing farther seems requisite for preparing my readers to enter, with full information, upon perusing the history of Charles V., but to give a view of the political constitution and form of civil government in each of the nations which acted any considerable part during that period. For as the institutions and events which I have endeavored to illustrate formed the people of Europe to resemble each other, and conducted them from barbarism to refinement, in the same path, and by nearly equal steps; there were other circumstances which occasioned a difference in their political establishments, and gave rise to those peculiar modes of government, which have produced such variety in the character and genius of nations.

It is no less necessary to become acquainted with the latter, than to have contemplated the former. Without a distinct knowledge of the peculiar form and genius of civil government in each state, a great part of its transactions must appear altogether mysterious and inexplicable. The historians of particular countries, as they seldom extended their views farther than to the amusement or instruction of their fellow-citizens, by whom they might presume that all their domestic customs and institutions were perfectly understood, have often neglected to descend into such details with respect to these as are sufficient to convey to foreigners full light and information concerning the occurrences which they relate. But a history which comprehends the transactions of so many different countries would

be extremely imperfect, without a previous survey of the constitution and political state of each. It is from his knowledge of these that the reader must draw those principles which will enable him to judge with discernment, and to decide with certainty, concerning the conduct of nations.

A minute detail, however, of the peculiar forms and regulations in every country, would lead to deductions of immeasurable length. To sketch out the great lines which distinguish and characterize each government, is all that the nature of my present work will admit of, and all that is necessary to illustrate the events which it records.

At the opening of the sixteenth century, the political aspect of Italy was extremely different from that of any other part of Europe. Instead of those extensive monarchies which occupied the rest of the continent, that delightful country was parcelled out among many small states, each of which possessed sovereign and independent jurisdiction. The only monarchy in Italy was that of Naples. The dominion of the popes was of a peculiar species, to which there is nothing similar either in ancient or modern times. In Venice, Florence, and Genoa, a republican form of government was established. Milan was subject to sovereigns, who had assumed no higher title than that of dukes.

The pope was the first of these powers in dignity, and not the least considerable by the extent of his territories. In the primitive church, the jurisdiction of bishops was equal and co-ordinate. They

derived, perhaps, some degree of consideration from the dignity of the see in which they presided. They possessed, however, no real authority or pre-eminence, but what they acquired by superior abilities, or superior sanctity. As Rome had so long been the seat of empire, and the capital of the world, its bishops were on that account entitled to respect; they received it; but during several ages they received, and even claimed, nothing more. From these humble beginnings, they advanced with such adventurous and well-directed ambition, that they established a spiritual dominion over the minds and sentiments of men, to which all Europe submitted with implicit obedience. Their claim of universal jurisdiction, as heads of the church, and their pretensions to infallibility in their decisions, as successors of St. Peter, are as chimerical as they are repugnant to the genius of the Christian religion. But on these foundations the superstition and credulity of mankind enabled them to erect an amazing superstructure. In all ecclesiastical controversies, their decisions were received as the infallible oracles of truth. Nor was the plenitude of their power confined solely to what was spiritual; they dethroned monarchs; disposed of crowns; absolved subjects from the obedience due to their sovereigns; and laid kingdoms under interdicts. There was not a state in Europe which had not been disquieted by their ambition; there was not a throne which they had not shaken, nor a prince who did not tremble at their power.

Nothing was wanting to render this empire absolute, and to establish it on the ruins of all civil authority, but that the popes should have possessed such a degree of temporal power as was sufficient to second and enforce their spiritual decrees. Happily for mankind, at the time when their spiritual jurisdiction was most extensive, and most revered, their secular dominion was extremely limited. They were powerful pontiffs, formidable at a distance; but they were petty princes, without any considerable domestic force. They had early endeavored, indeed, to acquire territory by arts similar to those which they had employed in extending their spiritual jurisdiction. Under pretence of a donation from Constantine, and of another from Charlemagne or his father Pepin, they attempted to take possession of some towns adjacent to Rome. But these donations were fictitious, and availed them little. The benefactions for which they were indebted to the credulity of the Norman adventurers, who conquered Naples, and to the superstition of the Countess Matilda, were real, and added ample domains to the holy see.

But the power of the popes did not increase in proportion to the extent of territory which they had acquired. In the dominions annexed to the holy see, as well as in those subject to other princes in Italy, the sovereign of a state was far from having the command of a force which it contained. During the turbulence and confusion of the Middle Ages, the powerful nobility, or leaders of popular factions

in Italy, had seized the government of different towns; and, after strengthening their fortifications, and taking a body of mercenaries into pay, they aspired at independence. The territory which the church had gained was filled with petty lords of this kind, who left the pope hardly the shadow of dominion.

As these usurpations almost annihilated the papal power in the greater part of the towns subject to the church, the Roman barons frequently disputed the authority of the popes, even in Rome itself. In the twelfth century, an opinion began to be propagated, "That as the function of ecclesiastics was purely spiritual, they ought to possess no property, and to claim no temporal jurisdiction; but, according to the laudable example of their predecessors in the primitive church, should subsist wholly upon their tithes, or upon the voluntary oblations of the people."[1] This doctrine being addressed to men who had beheld the scandalous manner in which the avarice and ambition of the clergy had prompted them to contend for wealth, and to exercise power, they listened to it with fond attention. The Roman barons, who had felt most sensibly the rigor of ecclesiastical oppression, adopted these sentiments with such ardor, that they set themselves instantly to shake off the yoke. They endeavored to restore some image of their ancient liberty, by reviving the institution of the Roman senate, in which they vested supreme authority; committing the execu-

[1] Otto Frisingensis de Gestis Frider. Imp. lib. ii. cap. 10.

tive power sometimes to one chief senator, sometimes to two, and sometimes to a magistrate dignified with the name of *The Patrician.* The popes exerted them with vigor, in order to check this dangerous encroachment on their jurisdiction. One of them, finding all his endeavors ineffectual, was so much mortified, that extreme grief cut short his days. Another, having ventured to attack the senators at the head of some armed men, was mortally wounded in the fray.[2] During a considerable period, the power of the popes, before which the greatest monarchs in Europe trembled, was circumscribed within such narrow limits in their own capital, that they durst hardly exert any act of authority without the permission and concurrence of the senate.

Encroachments were made upon the papal sovereignty, not only by the usurpations of the Roman nobility, but by the mutinous spirit of the people. During seventy years of the fourteenth century, the popes fixed their residence in Avignon. The inhabitants of Rome, accustomed to consider themselves as the descendants of the people who had conquered the world, and had given laws to it, were too high-spirited to submit with patience to the delegated authority of those persons to whom the popes committed the government of the city. On many occasions they opposed the execution of the papal mandates, and on the slightest appearance

[2] Otto Frising. Chron. lib. vii. cap. 27, 31. Id. de Gest. Frid. lib. i. c. 27. Muratori, Annali d'Italia, vol. ix. 398 404.

of innovation or oppression, they were ready to take arms in defence of their own immunities. Towards the middle of the fourteenth century, being instigated by Nicholas Rienzo, a man of low birth and a seditious spirit, but of popular eloquence and an enterprising ambition, they drove all the nobility out of the city, established a democratical form of government, elected Rienzo tribune of the people, and invested him with extensive authority. But though the frantic proceedings of the tribune soon overturned this new system; though the government of Rome was reinstated in its ancient form; yet every fresh attack contributed to weaken the papal jurisdiction; and the turbulence of the people concurred with the spirit of independence among the nobility, in circumscribing it more and more.[3] Gregory VII. and other domineering pontiffs accomplished those great things which rendered them so formidable to the emperors with whom they contended, not by the force of their arms, or by the extent of their power, but by the dread of their spiritual censures, and by the effect of their intrigues, which excited rivals, and called forth enemies against every prince whom they wished to depress or to destroy.

Many attempts were made by the popes, not only to humble those usurpers who lorded it over

[3] Histoire Florentine de Giov. Villani, liv. xii. c. 89, 104, ap. Murat. Script. Rerum Ital. vol. xiii. Vita di Cola di Rienzo, ap. Murat. Antiq Ital. vol. iii. p. 399, &c. Hist. de Nic. Rienzy, par M. de Boispréaux, p. 91, &c.

the cities in the ecclesiastical state, but to break the turbulent spirit of the Roman people. These were long unsuccessful. But at last Alexander VI., with a policy no less artful than flagitious, subdued or extirpated most of the great Roman barons, and rendered the popes masters of their own dominions. The enterprising ambition of Julius II. added conquests of no inconsiderable value to the patrimony of St. Peter. Thus the popes, by degrees, became powerful temporal princes. Their territories, in the age of Charles V., were of greater extent than at present; their country seems to have been better cultivated, as well as more populous; and as they drew large contributions from every part of Europe, their revenues far exceeded those of the neighboring powers, and rendered them capable of more sudden and vigorous efforts.

The genius of the papal government, however, was better adapted to the exercise of spiritual dominion than of temporal power. With respect to the former, all its maxims were steady and invariable; every new pontiff adopted the plan of his predecessor. By education and habit, ecclesiastics were so formed, that the character of the individual was sunk in that of the profession; and the passions of the man were sacrificed to the interest and honor of the order. The hands which held the reins of administration might change, but the spirit which conducted them was always the same. While the measures of other governments fluctu-

ated, and the objects at which they aimed varied, the Church kept one end in view; and to this unrelaxing constancy of pursuit it was indebted for its success in the boldest attempts ever made by human ambition.

But in their civil administration, the popes followed no such uniform or consistent plan. There, as in other governments, the character, the passions, and the interest of the person who had the supreme direction of affairs, occasioned a variation both in objects and measures. As few prelates reached the summit of ecclesiastical dignity until they were far advanced in life, a change of masters was more frequent in the papal dominions than in other states, and the political system was, of course, less stable and permanent. Every pope was eager to make the most of the short period during which he had the prospect of enjoying power, in order to aggrandize his own family, and to attain his private ends; and it was often the first business of his successor to undo all that he had done, and to overturn what he had established.

As ecclesiastics were trained to pacific arts, and early initiated in the mysteries of that policy by which the court of Rome extended or supported its spiritual dominion, the popes, in the conduct of their temporal affairs, were apt to follow the same maxims, and in all their measures were more ready to employ the refinements of intrigue than the force of arms. It was in the papal court that address and subtlety in negotiation became a sci-

ence; and during the sixteenth century, Rome was considered as the school in which it might be best acquired.

As the decorum of their ecclesiastical character prevented the popes from placing themselves at the head of their armies, or from taking the command in person of the military force in their dominions, they were afraid to arm their subjects; and in all their operations, whether offensive or defensive, they trusted entirely to mercenary troops.

As their power and dominions could not descend to their posterity, the popes were less solicitous than other princes to form or to encourage schemes of public utility and improvement. Their tenure was only for a short life; present advantage was what they chiefly studied; to squeeze and to amass, rather than to ameliorate, was their object. They erected, perhaps, some work of ostentation, to remain as a monument of their pontificate; they found it necessary, at some times, to establish useful institutions, in order to soothe and silence the turbulent populace of Rome; but plans of general benefit of their subjects, framed with a view to futurity, were rarely objects of attention in the papal policy. The patrimony of St. Peter was worse governed than any part of Europe; and though a generous pontiff might suspend for a little, or counteract the effects of those vices which are peculiar to the administration of ecclesiastics, the disease not only remained without remedy, but has gone on increasing from age to age; and the decline of the state has kept pace with its progress.

One circumstance farther, concerning the papal government, is so singular as to merit attention. As the spiritual supremacy and temporal power were united in one person, and uniformly aided each other in their operations, they became so blended together that it was difficult to separate them, even in imagination. The potentates who found it necessary to oppose the measures which the popes pursued as temporal princes, could not easily divest themselves of the reverence which they imagined to be due to them as heads of the Church and vicars of Jesus Christ. It was with reluctance that they could be brought to a rupture with the head of the Church; they were unwilling to push their operations against him to extremity; they listened eagerly to the first overtures of accommodation, and were anxious to procure it almost upon any terms. Their consciousness of this encouraged the enterprising pontiffs, who filled the papal throne about the beginning of the sixteenth century, to engage in schemes seemingly the most extravagant. They trusted that, if their temporal power was not sufficient to carry them through with success, the respect paid to their spiritual dignity would enable them to extricate themselves with facility and with honor.[4]

[4] The manner in which Louis XII. of France undertook and carried on war against Julius II. remarkably illustrates this observation. Louis solemnly consulted the clergy of France, whether it was lawful to take arms against a pope who had wantonly kindled war in Europe, and whom neither the faith of treaties, nor gratitude for favors received, nor the decorum of his character, could restrain from the most violent

But when popes came to take part more frequently in the contests among princes, and to engage as principals or auxiliaries in every war kindled in Europe, this veneration for their sacred character began to abate; and striking instances will occur in the following history of its being almost totally extinct.

Of all the Italian powers, the republic of Venice, next to the papal see, was most connected with the rest of Europe. The rise of that commonwealth, during the inroads of the Huns in the fifth century; the singular situation of its capital in the small isles of the Adriatic gulf; and the more singular form of its civil constitution, are generally known. If we view the Venetian government as calculated for the order of nobles alone, its institutions may be pronounced excellent; the deliberative, legislative, and executive powers are so admirably distributed and adjusted, that it must be regarded as a perfect model of political wisdom.

actions to which the lust of power prompts ambitious princes. Though his clergy authorized the war, yet Anne of Bretagne, his queen, entertained scruples with regard to the lawfulness of it. The king himself, from some superstition of the same kind, carried it on faintly; and, upon every fresh advantage, renewed his propositions of peace. *Mézéray, Hist. de France*, fol. edit. 1685, tom. i. 852. I shall produce another proof of this reverence for the papal character, still more striking. Guicciardini, the most sagacious, perhaps, of all modern historians, and the boldest in painting the vices and ambition of the popes, represents the death of Migliau, a Spanish officer, who was killed during the siege of Naples, as a punishment inflicted on him by Heaven, on account of his having opposed the setting of Clement VII. at liberty. *Guic. Istoria d'Italia*, Genev. 1645, vol. ii. lib. 18, p. 467.

But if we consider it as formed for a numerous body of people subject to its jurisdiction, it will appear a rigid and partial aristocracy, which lodges all power in the hands of a few members of the community, while it degrades and oppresses the rest.

The spirit of government, in a commonwealth of this species, was, of course, timid and jealous. The Venetian nobles distrusted their own subjects, and were afraid of allowing them the use of arms. They encouraged among them arts of industry and commerce; they employed them in manufactures and in navigation; but never admitted them into the troops which the state kept in its pay. The military force of the republic consisted entirely of foreign mercenaries. The command of these was never trusted to noble Venetians, lest they should acquire such influence over the army, as might endanger the public liberty; or become accustomed to the exercise of such power, as would make them unwilling to return to the condition of private citizens. A soldier of fortune was placed at the head of the armies of the commonwealth; and to obtain that honor was the great object of the Italian *condottieri*, or leaders of bands, who, in the fifteenth and sixteenth centuries, made a trade of war, and raised and hired out soldiers to different states. But the same suspicious policy which induced the Venetians to employ these adventurers prevented their placing entire confidence in them. Two noblemen, appointed by the senate,

accompanied their army when it took the field, with the appellation of *proveditori*, and, like the field deputies of the Dutch republic in latter times, observed all the motions of the general, and checked and controlled him in all his operations.

A commonwealth with such civil and military institutions was not formed to make conquests. While its subjects were disarmed, and its nobles excluded from military command, it carried on its warlike enterprises with great disadvantage. This ought to have taught the Venetians to rest satisfied with making self-preservation, and the enjoyment of domestic security, the objects of their policy. But republics are apt to be seduced by the spirit of ambition, as well as kings. When the Venetians so far forgot the interior defects in their government, as to aim at extensive conquests, the fatal blow which they received in the war excited by the league of Cambray convinced them of the imprudence and danger of making violent efforts, in opposition to the genius and tendency of their constitution.

It is not, however, by its military, but by its naval and commercial power, that the importance of the Venetian commonwealth must be estimated. The latter constituted the real force and nerves of the state. The jealousy of government did not extend to this department. Nothing was apprehended from this quarter that could prove formidable to liberty. The senate encouraged the nobles

to trade, and to serve on board the fleet. They became merchants and admirals. They increased the wealth of their country by their industry. They added to its dominions, by the valor with which they conducted its naval armaments.

Commerce was an inexhaustible source of opulence to the Venetians. All the nations in Europe depended upon them, not only for the commodities of the East, but for various manufactures fabricated by them alone, or finished with a dexterity and elegance unknown in other countries. From this extensive commerce, the state derived such immense supplies, as concealed those vices in its constitution which I have mentioned; and enabled it to keep on foot such armies, as were not only an overmatch for the force which any of its neighbors could bring into the field, but were sufficient to contend, for some time, with the powerful monarchs beyond the Alps. During its struggles with he princes united against it by the league at Cambay, the republic levied sums which, even in the esent age, would be deemed considerable; and hile the king of France paid the exorbitant interest which I have mentioned for the money advanced to him, and the emperor, eager to borrow, but destitute of credit, was known by the name of *Maximilian the moneyless*, the Venetians raised whatever sums they pleased, at the moderate premium of five in the hundred.[5]

[5] Hist. de la Ligue faite à Cambray, par M. l'Abbé du Bos, liv. v. Sandi, Storia Civile Veneziana, liv. viii. c. 16, p. 891, &c.

The constitution of Florence was perfectly the reverse of the Venetian. It partook as much of democratical turbulence and licentiousness, as the other of aristocratical rigor. Florence, however, was a commercial, not a military democracy. The nature of its institutions was favorable to commerce, and the genius of the people was turned towards it. The vast wealth which the family of Medici had acquired by trade, together with the magnificence, the generosity, and the virtue of the first Cosmo, gave him such an ascendant over the affections as well as the counsels of his countrymen, that though the forms of popular government were preserved, though the various departments of administration were filled by magistrates distinguished by the ancient names, and elected in the usual manner, he was in reality the head of the commonwealth; and in the station of a private citizen, he possessed supreme authority. Cosmo transmitted a considerable degree of this power to his descendants; and during a greater part of the fifteenth century, the political state of Florence was extremely singular. The appearance of republican government subsisted, the people were passionately attached to it, and on some occasions contended warmly for their privileges; and yet they permitted a single family to assume the direction of their affairs, almost as absolutely as if it had been formally invested with sovereign power. The jealousy of the Medici concurred with the commercial spirit of the Florentines in putting

the military force of the republic upon the same footing with that of the other Italian states. The troops which the Florentines employed in their wars consisted almost entirely of mercenary soldiers, furnished by the *condottieri*, or leaders of bands, whom they took into their pay.

In the kingdom of Naples, to which the sovereignty of the island of Sicily was annexed, the feudal government was established in the same form, and with the same defects, as in the other nations of Europe. The frequent and violent revolutions which happened in that monarchy had considerably increased these defects, and rendered them more intolerable. The succession to the crown of Naples had been so often interrupted or altered, and so many princes of foreign blood had, at different periods, obtained possession of the throne, that the Neapolitan nobility had lost, in a great measure, that attachment to the family of their sovereigns, as well as that reverence for their persons, which in other feudal kingdoms, contributed to set some bounds to the encroachments of the barons upon the royal prerogative and power. At the same time, the different pretenders to the crown, being obliged to court the barons who adhered to them, and on whose support they depended for the success of their claims, they augmented their privileges by liberal concessions, and connived at their boldest usurpations. Even when seated on the throne, it was dangerous for a prince, who held his sceptre by a disputed title, to venture on any step towards ex

tending his own power, or circumscribing that of the nobles.

From all these causes, the kingdom of Naples was the most turbulent of any in Europe, and the authority of its monarchs the least extensive. Though Ferdinand I., who began his reign in the year 1468, attempted to break the power of the aristocracy; though his son, Alphonso, that he might crush it at once by cutting off the leaders of greatest reputation and influence among the Neapolitan barons, ventured to commit one of the most perfidious and cruel actions recorded in history; the order of nobles was nevertheless more exasperated than humbled by their measures.[6] The resentment which these outrages excited was so violent, and the power of the malecontent nobles was still so formidable, that to these may be ascribed, in a great degree, the ease and rapidity with which Charles VIII. conquered the kingdom of Naples.[7]

The event that gave rise to the violent contests concerning the succession to the crown of Naples and Sicily, which brought so many calamities upon these kingdoms, happened in the thirteenth century. Upon the death of the Emperor Frederic II., Manfred, his natural son, aspiring to the Neapolitan throne, murdered his brother, the Emperor Conrad, (if we may believe contemporary historians,) and by that crime obtained possession of it.[8] The popes,

6 Giannone, book xxviii. chap. 2, vol. ii. p. 410, &c.

7 Id., ibid., p. 414.

8 Struv. Corp. Hist. Germ. i. 481. Giannone, book xviii. ch. 5.

from their implacable enmity to the house of Swabia, not only refused to recognize Manfred's title, but endeavored to excite against him some rival capable of wresting the sceptre out of his hand. Charles, count of Anjou, the brother of St. Louis, king of France, undertook this; and he received from the popes the investiture of the kingdom of Naples and Sicily as a fief held of the holy see. The count of Anjou's efforts were crowned with success; Manfred fell in battle; and he took possession of the vacant throne. But soon after, Charles sullied the glory which he had acquired by the injustice and cruelty with which he put to death, by the hands of the executioner, Conradin, the last prince of the house of Swabia, and the rightful heir of the Neapolitan crown. That gallant young prince asserted his title, to the last, with a courage worthy of a better fate. On the scaffold, he declared Peter, at that time prince, and soon after king of Aragon, who had married Manfred's only daughter, his heir; and throwing his glove among the people, he entreated that it might be carried to Peter, as the symbol by which he conveyed all his rights to him.[9] The desire of avenging the insult offered to royalty, by the death of Conradin, concurred with his own ambition in prompting Peter to take arms in support of the title which he had acquired. From that period, during almost two centuries, the houses of Aragon and Anjou contended for the crown of Naples. Amidst a succession of revolutions more rapid, as

[9] Giannone, book xix. ch. 4, § 2.

well as of crimes more atrocious, than what occur in the history of almost any other kingdom, monarchs, sometimes of the Aragonese line, and sometimes of the Angevin, were seated on the throne. At length the princes of the house of Aragon obtained such firm possession of this long-disputed inheritance, that they transmitted it quietly to a bastard branch of their family.[10] [1434.]

The race of the Angevin kings, however, was not extinct; nor had they relinquished their title to the Neapolitan crown. The count of Maine and Provence, the heir of this family, conveyed all his rights and pretensions to Louis XI. and to his successors. Charles VIII., as I have already related, crossed the Alps at the head of a powerful army, in order to prosecute his claim with a degree of vigor far superior to that which the princes from whom he derived it had been capable of exerting. The rapid progress of his arms in Italy, as well as the short time during which he enjoyed the fruits of his success, have already been mentioned, and are well known. Frederic, the heir of the illegitimate branch of the Aragonese family, soon recovered the throne of which Charles had dispossessed him. Louis XII. and Ferdinand of Aragon united against this prince, whom both, though for different reasons, considered as an usurper, and agreed to divide his dominions between them. Frederic, unable to resist the combined monarchs, each of whom was far his superior in power, resigned his sceptre.

[10] Giannone, book xxvi. ch. 2.

Louis and Ferdinand, though they had concurred in making the conquest, differed about the division of it; and from allies became enemies. But Gonsalvo de Cordova, partly by the exertion of such military talents as gave him a just title to the appellation of the *great captain*, which the Spanish historians have bestowed upon him, and partly by such shameless and frequent violations of the most solemn engagements as leave an indelible stain on his memory, stripped the French of all that they possessed in the Neapolitan dominions, and secured the peaceable possession of them to his master. These, together with his other kingdoms, Ferdinand transmitted to his grandson, Charles V., whose right to possess them, if not altogether uncontrovertible, seems, at least, to be as well founded as that which the kings of France set up in opposition to it.[11]

There is nothing in the political constitution or interior government of the duchy of Milan, so remarkable as to require a particular explanation. But as the right of succession to that fertile province was the cause or the pretext of almost all the wars carried on in Italy during the reign of Charles V., it is necessary to trace these disputes to their source, and to inquire into the pretensions of the various competitors.

During the long and fierce contests excited in Italy by the violence of the Guelf and Ghibelline

[11] Droits des Rois de France au Royaume de Sicile. Mém. de Comin. édit. de Fresnoy, tom. iv. part ii. p. 5.

factions, the family of Visconti rose to great eminence among their fellow-citizens of Milan. As the Visconti had adhered uniformly to the Ghibelline or imperial interest, they, by way of recompense, received, from one emperor, the dignity of perpetual vicars of the empire in Italy;[12] they were created, by another, dukes of Milan; and, together with that title, the possession of the city and its territories was bestowed upon them as an hereditary fief.[13] John, king of France, among other expedients for raising money, which the calamities of his reign obliged him to employ, condescended to give one of his daughters in marriage to John Galeazzo Visconti, the first duke of Milan, from whom he had received considerable sums. Valentine Visconti, one of the children of this marriage, married her cousin, Louis, duke of Orleans, the only brother of Charles VI. In their marriage contract, which the pope confirmed, it was stipulated that, upon failure of heirs male in the family of Visconti, the duchy of Milan should descend to the posterity of Valentine and the duke of Orleans. That event took place. In the year 1447, Philip Maria, the last prince of the ducal family of Visconti, died. Various competitors claimed the succession. Charles, duke of Orleans, pleaded his right to it, founded on the marriage contract of his mother, Valentine Visconti. Alfonso, king of

[12] Petrarch. Epist. ap. Struv. Corp. i. p. 625.

[13] Leibnit. Cod. Jur. Gent. Diplom. vol. i. p. 257.

Naples, claimed it in consequence of a will made by Philip Maria in his favor. The emperor contended that, upon the extinction of male issue in the family of Visconti, the fief returned to the superior lord, and ought to be re-annexed to the empire. The people of Milan, smitten with the love of liberty which in that age prevailed among the Italian states, declared against the dominion of any master, and established a republican form of government.

But during the struggle among so many competitors, the prize for which they contended was seized by one from whom none of them apprehended any danger. Francis Sforza, the natural son of Jacomuzzo Sforza, whom his courage and abilities had elevated from the rank of a peasant to be one of the most eminent and powerful of the Italian *condottieri*, having succeeded his father in the command of the adventurers who followed his standard, had married a natural daughter of the last duke of Milan. Upon this shadow of a title Francis founded his pretensions to the duchy, which he supported with such talents and valor as placed him at last on the ducal throne. The virtues, as well as abilities, with which he governed, inducing his subjects to forget the defects in his title, he transmitted his dominions quietly to his son; from whom they descended to his grandson. He was murdered by his grand-uncle Ludovico, surnamed the Moor, who took possession of the duchy; and his right to it was confirmed by the

investiture of the Emperor Maximilian, in the year 1494.[14]

Louis XI., who took pleasure in depressing the princes of the blood, and who admired the political abilities of Francis Sforza, would not permit the duke of Orleans to take any step in prosecution of his right to the duchy of Milan. Ludovico the Moor kept up such a close connection with Charles VIII., that, during the greater part of his reign, the claim of the family of Orleans continued to lie dormant. But when the crown of France devolved on Louis XII., duke of Orleans, he instantly asserted the rights of his family with the ardor which it was natural to expect, and marched at the head of a powerful army to support them. Ludovico Sforza, incapable of contending with such a rival, was stripped of all his dominions in the space of a few days. The king, clad in the ducal robes, entered Milan in triumph; and soon after, Ludovico, having been betrayed by the Swiss in his pay, was sent a prisoner into France, and shut up in the castle of Loches, where he lay unpitied during the remainder of his days. In consequence of one of the singular revolutions which occur so frequently in the history of the Milanese, his son, Maximilian Sforza, was placed on the ducal throne, of which he kept possession during the reign of Louis XII. But his successor, Francis I., was too high-spirited and enterprising tamely to relinquish

[14] Ripalm. Hist. Mediol. lib. vi. 654, ap. Struv. Corp. i. 930. Du Mont, Corps. Diplom. tom. iii. p. ii. 333, ibid.

his title. As soon as he was seated upon the throne, he prepared to invade the Milanese; and his right of succession to it appears, from this detail, to have been more natural and more just than that of any other competitor. [1512.]

It is unnecessary to enter into any detail with respect to the form of government in Genoa, Parma, Modena, and the other inferior states of Italy. Their names, indeed, will often occur in the following history. But the power of these states themselves was so inconsiderable, that their fate depended little upon their own efforts; and the frequent revolutions which they underwent were brought about rather by the operations of the princes who attacked or defended them, than by anything peculiar in their internal constitution.

Of the great kingdoms on this side of the Alps, Spain is one of the most considerable; and as it was the hereditary domain of Charles V., as well as the chief source of his power and wealth, a distinct knowledge of its political constitution is of capital importance towards understanding the transactions of his reign.

The Vandals and Goths, who overturned the Roman power in Spain, established a form of government in that country, and introduced customs and laws, perfectly similar to those which were established in the rest of Europe by the other victorious tribes which acquired settlements there. For some time, society advanced, among the new inhabitants of Spain, by the same steps, and seemed

to hold the same course, as in other European nations. To this progress a sudden stop was put by the invasion of the Saracens or Moors from Africa. The Goths could not withstand the efforts of their enthusiastic valor, which subdued the greatest part of Spain, with the same impetuous rapidity that distinguishes all the operations of their arms. The conquerors introduced into the country in which they settled, the Mahometan religion, the Arabic language, the manners of the East, together with that taste for the arts, and that love of elegance and splendor, which the Caliphs had begun to cultivate among their subjects. [712.]

Such Gothic nobles as disdained to submit to the Moorish yoke, fled for refuge to the inaccessible mountains of Asturias. There they comforted themselves with enjoying the exercise of the Christian religion, and with maintaining the authority of their ancient laws. Being joined by many of the boldest and most warlike among their countrymen, they sallied out upon the adjacent settlements of the Moors in small parties; but venturing only upon short excursions at first, they were satisfied with plunder and revenge, without thinking of conquest. By degrees their strength increased, their views enlarged, a regular government was established among them, and they began to aim at extending their territories. While they pushed on their attacks with the unremitting ardor excited by zeal for religion, by the desire of vengeance, and by the hope of rescuing their

country from oppression; while they conducted their operations with the courage natural to men who had no other occupation but war, and who were strangers to all the arts which corrupt or enfeeble the mind, — the Moors gradually lost many of the advantages to which they had been indebted for their first success. They threw off all dependence on the Caliphs;[15] they neglected to preserve a close connection with their countrymen in Africa; their empire in Spain was split into many small kingdoms; the arts which they cultivated, together with the luxury to which these gave rise, relaxed, in some measure, the force of their military institutions, and abated the vigor of their warlike spirit. The Moors, however, continued still to be a gallant people, and possessed great resources. According to the magnificent style of the Spanish historians, eight centuries of almost uninterrupted war elapsed, and three thousand seven hundred battles were fought, before the last of the Moorish kingdoms in Spain submitted to the Christian arms. [1492.]

As the Christians made their conquests upon the Mahometans at various periods, and under different leaders, each formed the territory which he had wrested from the common enemy into an independent state. Spain was divided into almost as many separate kingdoms as it contained provinces; in each city of note a petty monarch established his throne, and assumed all the ensigns of royalty. In

[15] Jos. Sim. Assemanni Histor. Ital. Scriptores, vol. iii. p. 135.

a series of years, however, by the usual events of intermarriages, or succession, or conquest, all these inferior principalities were annexed to the more powerful kingdoms of Castile and of Aragon. At length, by the fortunate marriage of Ferdinand and Isabella, the former the hereditary monarch of Aragon, and the latter raised to the throne of Castile by the affection of her subjects, all the Spanish crowns were united, and descended in the same line. [1481.]

From this period, the political constitution of Spain began to assume a regular and uniform appearance; the genius of its government may be delineated, and the progress of its laws and manners may be traced, with certainty. Notwithstanding the singular revolution which the invasion of the Moors occasioned in Spain, and the peculiarity of its fate, in being so long subject to the Mahometan yoke, the customs introduced by the Vandals and Goths had taken such deep root, and were so thoroughly incorporated with the frame of its government, that, in every province which the Christians recovered from the Moors, we find the condition of individuals, as well as the political constitution, nearly the same as in other nations of Europe. Lands were held by the same tenure; justice was dispensed in the same form; the same privileges were claimed by the nobility, and the same power exercised by the cortes, or general assembly of the kingdom. Several circumstances contributed to secure this permanence of the feudal

institutions in Spain, notwithstanding the conquest of the Moors, which seemed to have overturned them. Such of the Spaniards as preserved their independence adhered to their ancient customs, not only from attachment to them, but out of antipathy to the Moors, to whose ideas concerning property and government these customs were totally repugnant. Even among the Christians, who submitted to the Moorish conquerors, and consented to become their subjects, ancient customs were not entirely abolished. They were permitted to retain their religion, their laws concerning private property, their forms of administering justice, and their mode of levying taxes. The followers of Mahomet are the only enthusiasts who have united the spirit of toleration with zeal for making proselytes, and who, at the same time that they took arms to propagate the doctrine of their prophet, permitted such as would not embrace it to adhere to their own tenets, and to practise their own rites. To this peculiarity in the genius of the Mahometan religion, as well as to the desire which the Moors had of reconciling the Christians to their yoke, it was owing that the ancient manners and laws in Spain survived the violent shock of a conquest, and were permitted to subsist, notwithstanding the introduction of a new religion and a new form of government into that country. It is obvious, from all these particulars, that the Christians must have found it extremely easy to re-establish manners and government on their ancient founda-

tions, in those provinces of Spain which they wrested successively from the Moors. A considerable part of the people retained such a fondness for the customs, and such a reverence for the laws of their ancestors, that, wishing to see them completely restored, they were not only willing but eager to resume the former, and to recognize the authority of the latter.

But though the feudal form of government, with all the institutions which characterize it, was thus preserved entire in Castile and Aragon, as well as in all the kingdoms which depended on these crowns, there were certain peculiarities in their political constitutions which distinguish them from those of any other country in Europe. The royal prerogative, extremely limited in every feudal kingdom, was circumscribed in Spain within such narrow bounds as reduced the power of the sovereign almost to nothing. The privileges of the nobility were great in proportion, and extended so far, as to border on absolute independence. The immunities of the cities were likewise greater than in other feudal kingdoms; they possessed considerable influence in the cortes, and they aspired at obtaining more. Such a state of society, in which the political machine was so ill adjusted, and the several members of the legislature so improperly balanced, produced internal disorders in the kingdoms of Spain, which rose beyond the pitch of turbulence and anarchy usual under the feudal government. The whole tenor of the Spanish

history confirms the truth of this observation; and when the mutinous spirit, to which the genius of their policy gave birth and vigor, was no longer restrained and overawed by the immediate dread of the Moorish arms, it broke out into more frequent insurrections against the government of their princes, as well as more outrageous insults on their dignity, than occur in the annals of any other country. These were accompanied at some times with more liberal sentiments concerning the rights of the people, at other times with more elevated notions concerning the privileges of the nobles, than were common in other nations.

In the principality of Catalonia, which was annexed to the kingdom of Aragon, the impatience of the people to obtain a redress of their grievances having prompted them to take arms against their sovereign, John II., they, by a solemn deed, recalled the oath of allegiance which they had sworn to him, declared him and his posterity to be unworthy of the throne,[16] and endeavored to establish a republican form of government, in order to secure the perpetual enjoyment of that liberty after which they aspired.[17] Nearly about the same period, the indignation of the Castilian nobility against the weak and flagitious administration of Henry IV. having led them to combine against him, they

[16] Zurita, Anales de Arag. tom. iv. 113, 115, &c.

[17] Ferrera, Hist. d'Espagne, tom. vii. p. 92. P. Orléans, Révol. d'Espagne, tom. iii. p. 155. L. Marinæus Siculus, De Reb. Hispan. apud Schotti Script. Hispan. fol. 429.

arrogated, as one of the privileges belonging to their order, the right of trying and of passing sentence on their sovereign. That the exercise of this power might be as public and solemn as the pretension to it was bold, they summoned all the nobility of their party to meet at Avila; a spacious theatre was erected in a plain without the walls of the town; an image representing the king was seated on a throne, clad in royal robes, with a crown on its head, a sceptre in its hand, and the sword of justice by its side. The accusation against the king was read, and the sentence of deposition was pronounced in presence of a numerous assembly. At the close of the first article of the charge, the archbishop of Toledo advanced and tore the crown from the head of the image; at the close of the second, the Conde de Placentia snatched the sword of justice from its side; at the close of the third, the Conde de Benevente wrested the sceptre from its hand; at the close of the last, Don Diego Lopes de Stuniga tumbled it headlong from the throne. At the same instant, Don Alfonzo, Henry's brother, was proclaimed king of Castile and Leon in his stead.[18]

The most daring leaders of faction would not have ventured on these measures, nor have conducted them with such public ceremony, if the sentiments of the people concerning the royal dignity had not been so formed by the laws and policy to which they were accustomed, both in Castile and

[18] Marian. Hist. lib. xxxiii. c. 9. [1465.]

Catalonia, as prepared them to approve of such extraordinary proceedings, or to acquiesce in them.

In Aragon the form of government was monarchical, but the genius and maxims of it were purely republican. The kings, who were long elective, retained only the shadow of power; the real exercise of it was in the cortes, or parliament of the kingdom. This supreme assembly was composed of four different *arms* or members: the nobility of the first rank; the equestrian order, or nobility of the second class; the representatives of the cities and towns, whose right to a place in the cortes, if we may give credit to the historians of Aragon, was coeval with the constitution; the ecclesiastical order, composed of the dignitaries of the church, together with the representatives of the inferior clergy.[19] No law could pass in this assembly without the assent of every single member who had a right to vote.[20] Without the permission of the cortes no tax could be imposed; no war could be declared; no peace could be concluded; no money could be coined; nor could any alteration be made in the current specie.[21] The power of reviewing the proceedings of all inferior courts, the privilege of inspecting every department of administration, and the right of redressing all grievances, belonged to the cortes. Nor did those

[19] Forma de celebrar Cortes en Aragon, por Geron. Martel.

[20] Martel. ibid. p. 2.

[21] Hier. Blanca, Comment. Rer. Aragon. ap. Schot. Script. Hispan. vol. iii. p. 750.

who conceived themselves to be aggrieved address the cortes in the humble tone of supplicants and petition for redress; they demanded it as the birthright of freemen, and required the guardians of their liberty to decide with respect to the points which they laid before them.[22] This sovereign court was held during several centuries every year; but, in consequence of a regulation introduced about the beginning of the fourteenth century, it was convoked from that period only once in two years. After it was assembled, the king had no right to prorogue or dissolve it without its own consent; and the session continued forty days.[23]

Not satisfied with having erected such formidable barriers against the encroachments of the royal prerogative, nor willing to commit the sole guardianship of their liberties entirely to the vigilance and authority of an assembly similar to the diets, states-general, and parliaments, in which the other feudal nations have placed so much confidence, the Aragonese had recourse to an institution peculiar to themselves, and elected a *justiza*, or supreme judge. This magistrate, whose office bore some resemblance to that of the ephori in ancient Sparta, acted as the protector of the people and the controller of the prince. The person of the justiza was sacred, his power and jurisdiction almost unbounded. He was the supreme interpreter of the laws. Not only inferior

[22] Martel. Forma de Celebr. p. 2. [23] Hier. Blanca, Comment. 763.

judges, but the kings themselves, were bound to consult him in every doubtful case, and to receive his responses with implicit deference.[24] An appeal lay to him from the royal judges, as well as from those appointed by the barons within their respective territories. Even when no appeal was made to him, he could interpose by his own authority, prohibit the ordinary judge to proceed, take immediate cognizance of the cause himself, and remove the party accused to the *manifestation*, or prison of the state, to which no person had access but by his permission. His power was exerted with no less vigor and effect in superintend ing the administration of government than in regulating the course of justice. It was the prerogative of the justiza to inspect the conduct of the king. He had a title to review all the royal proclamations and patents, and to declare whether or not they were agreeable to law, and ought to be carried into execution. He, by his sole authority, could exclude any of the king's ministers from the conduct of affairs, and call them to answer for their maleadministration. He himself was accountable to the cortes only for the manner in which he discharged the duties of this high office, and performed functions of the greatest importance that could be committed to a subject.[25]

It is evident, from a bare enumeration of the

[24] Blanca has preserved two responses of the justiza to James II., who reigned towards the close of the thirteenth century. Blanca, 748.

[25] Note XXXI. Hier. Blanca, Comment. pp. 747, 755.

privileges of the Aragonese cortes, as well as of the rights belonging to the justiza, that a very small portion of power remained in the hands of the king. The Aragonese seem to have been solicitous that their monarchs should know and feel this state of impotence to which they were reduced. Even in swearing allegiance to their sovereign, an act which ought naturally to be accompanied with professions of submission and respect, they devised an oath in such a form as to remind him of his dependence on his subjects. "We," said the justiza to the king in the name of his high-spirited barons, "who are each of us as good, and who are altogether more powerful than you, promise obedience to your government, if you maintain our rights and liberties: but if not, not." Conformably to this oath they established it as a fundamental article in their constitution, that, if the king should violate their rights and privileges, it was lawful for the people to disclaim him as their sovereign, and to elect another, even though a heathen, in his place.[26] The attachment of the Aragonese to this singular constitution of government was extreme, and their respect for it approached to superstitious veneration.[27] In the preamble to one of their laws they declare, that such was the barrenness of their country, and the poverty of the inhabitants, that, if it were not on account of the liberties by which they were distinguished from other nations, the

[26] Hier. Blanca, Comment. 720. [27] Note XXXII.

people would abandon it, and go in quest of a settlement to some more fruitful region.[28]

In Castile there were not such peculiarities in the form of government as to establish any remarkable distinction between it and that of the other European nations. The executive part of government was committed to the king, but with a prerogative extremely limited. The legislative authority resided in the cortes, which was composed of the nobility, the dignified ecclesiastics, and the representatives of the cities. The assembly of the cortes in Castile was very ancient, and seems to have been almost coeval with the constitution. The members of the three different orders, who had a right of suffrage, met in one place, and deliberated as one collective body; the decisions of which were regulated by the sentiments of the majority. The right of imposing taxes, of enacting laws, and of redressing grievances, belonged to this assembly; and, in order to secure the assent of the king to such statutes and regulations as were deemed salutary or beneficial to the kingdom, it was usual in the cortes to take no step towards granting money until all business relative to the public welfare was concluded. The representatives of cities seem to have obtained a seat very early in the cortes of Castile, and soon acquired such influence and credit as were very uncommon, at a period when the splendor and pre-eminence of the nobility had eclipsed or depressed all other orders

[28] Hier. Blanca, Comment. p. 751.

of men. The number of members from cities bore such a proportion to that of the whole collective body as rendered them extremely respectable in the cortes.[29] The degree of consideration which they possessed in the state may be estimated by one event. Upon the death of John I. a council of regency was appointed to govern the kingdom during the minority of his son. It was composed of an equal number of noblemen and of deputies chosen by the cities; the latter were admitted to the same rank, and invested with the same powers, as prelates and grandees of the first order.[30] But though the members of communities in Castile were elevated above the condition wherein they were placed in other kingdoms of Europe, though they had attained to such political importance, that even the proud and jealous spirit of the feudal aristocracy could not exclude them from a considerable share in government; yet the nobles, notwithstanding these acquisitions of the commons, continued to assert the privileges of their order, in opposition to the crown, in a tone extremely high. There was not any body of nobility in Europe more distinguished for independence of spirit, haughtiness of deportment, and bold pretensions, than that of Castile. The history of that monarchy affords the most striking examples of the vigilance with which they observed, and of the vigor with which they opposed, every measure of their kings that tended to encroach on their jurisdiction, to

[29] Note XXXIII. [30] Marian. Hist. lib. xviii. c. 15.

diminish their dignity, or to abridge their power. Even in their ordinary intercourse with their monarchs they preserved such a consciousness of their rank, that the nobles of the first order claimed it as a privilege to be covered in the royal presence, and approached their sovereigns rather as equals than as subjects.

The constitutions of the subordinate monarchies which depended on the crowns of Castile and Aragon nearly resembled those of the kingdoms to which they were annexed. In all of them, the dignity and independence of the nobles were great; the immunities and power of the cities were considerable.

An attentive observation of the singular situation of Spain, as well as the various events which occurred there from the invasion of the Moors to the union of its kingdom under Ferdinand and Isabella, will discover the causes to which all the peculiarities in its political constitution I have pointed out ought to be ascribed.

As the provinces of Spain were wrested from the Mahometans gradually and with difficulty, the nobles who followed the standard of any eminent leader in these wars conquered not for him alone, but for themselves. They claimed a share in the lands which their valor had won from the enemy, and their prosperity and power increased, in proportion as the territory of the prince extended.

During their perpetual wars with the Moors,

the monarchs of the several kingdoms in Spain depended so much on their nobles, that it became necessary to conciliate their good-will by successive grants of new honors and privileges. By the time that any prince could establish his dominion in a conquered province, the greater part of the territory was parcelled out by him among his barons, with such jurisdiction and immunities as raised them almost to sovereign power.

At the same time, the kingdoms erected in so many different corners of Spain were of inconsiderable extent. The petty monarch was but little elevated above his nobles. They, feeling themselves to be almost his equals, acted as such; and could not look up to the kings of such limited domains with the same reverence that the sovereigns of the great monarchies in Europe were viewed by their subjects.[31]

While these circumstances concurred in exalting the nobility, and in depressing the royal authority, there were other causes which raised the cities in Spain to consideration and power.

As the open country, during the wars with the Moors, was perpetually exposed to the excursions of the enemy, with whom no peace or truce was so permanent as to prove any lasting security, self-preservation obliged persons of all ranks to fix their residence in places of strength. The castles of the barons, which, in other countries, afforded a commodious retreat from the depredations of ban-

[31] Note XXXIV.

ditti, or from the transient violence of any interior commotion, were unable to resist an enemy whose operations were conducted with regular and persevering vigor. Cities, in which great numbers united for their mutual defence, were the only places in which people could reside with any prospect of safety. To this was owing the rapid growth of those cities in Spain of which the Christians recovered possession. All who fled from the Moorish yoke resorted to them, as to an asylum; and in them the greater part of those who took the field against the Mahometans established their families.

Several of these cities, during a longer or shorter course of years, were the capitals of little states, and enjoyed all the advantages which accelerate the increase of inhabitants in every place that is the seat of government.

From these concurring causes, the number of cities in Spain, at the beginning of the fifteenth century, had become considerable, and they were peopled far beyond the proportion which was common in other parts of Europe, except in Italy and the Low Countries. The Moors had introduced manufactures into those cities, while under their dominion. The Christians, who, by intermixture with them, had learned their arts, continued to cultivate these. Trade, in several of the Spanish towns, appears to have been carried on with vigor; and the spirit of commerce continued to preserve the number of their inhabitants, as the sense of danger had first induced them to crowd together.

As the Spanish cities were populous, many of the inhabitants were of a rank superior to those who resided in towns in other countries of Europe. That cause, which contributed chiefly to their population, affected equally persons of every condition, who flocked thither promiscuously, in order to find shelter there, or in hopes of making a stand against the enemy, with greater advantage than in any other station. The persons elected as their representatives in the cortes by the cities, or promoted to offices of trust and dignity in the government of the community, were often, as will appear from transactions which I shall hereafter relate, of such considerable rank in the kingdom as reflected lustre on their constituents, and on the stations wherein they were placed.

As it was impossible to carry on a continual war against the Moors, without some other military force than that which the barons were obliged to bring into the field, in consequence of the feudal tenures, it became necessary to have some troops, particularly a body of light cavalry, in constant pay. It was one of the privileges of the nobles, that their lands were exempt from the burden of taxes. The charge of supporting the troops requisite for the public safety fell wholly upon the cities; and their kings, being obliged frequently to apply to them for aid, found it necessary to gain their favor by concessions, which not only extended their immunities, but added to their wealth and power.

When the influence of all these circumstances, peculiar to Spain, is added to the general and common causes, which contributed to aggrandize cities in other countries of Europe, this will fully account for the extensive privileges which they acquired, as well as for the extraordinary consideration to which they attained, in all the Spanish kingdoms.[32]

By these exorbitant privileges of the nobility, and this unusual power of the cities in Spain, the royal prerogative was hemmed in on every side, and reduced within very narrow bounds. Sensible of this, and impatient of such restraint, several monarchs endeavored, at various junctures, and by different means, to enlarge their own jurisdiction. Their power, however, or their abilities, were so unequal to the undertaking, that their efforts were attended with little success. But when Ferdinand and Isabella found themselves at the head of the united kingdoms of Spain, and delivered from the danger and interruption of domestic wars, they were not only in a condition to resume, but were able to prosecute with advantage, the schemes for extending the prerogative, which their ancestors had attempted in vain. Ferdinand's profound sagacity in concerting his measures, his persevering industry in conducting them, and his uncommon address in carrying them into execution, fitted him admirably for an undertaking which required all these talents.

[32] Note XXXV.

As the overgrown power and high pretensions of the nobility were what the monarchs of Spain felt most sensibly, and bore with the greatest impatience, the great object of Ferdinand's policy was to reduce these within more moderate bounds. Under various pretexts, sometimes by violence, more frequently in consequence of decrees obtained in the courts of law, he wrested from the barons a great part of the lands which had been granted to them by the inconsiderate bounty of former monarchs, particularly during the feeble and profuse reign of his predecessor, Henry IV. He did not give the entire conduct of affairs to persons of noble birth, who were accustomed to occupy every department of importance in peace or in war, as if it had been a privilege peculiar to their order to be employed as the sole counsellors and ministers of the crown. He often transacted business of great consequence, without their intervention, and bestowed many offices of power and trust on new men, devoted to his interest.[33] He introduced a degree of state and dignity into his court, which, being little known in Spain while it remained split into many small kingdoms, taught the nobles to approach their sovereign with more ceremony, and gradually rendered him the object of greater deference and respect.

The annexing the masterships of the three military orders of St. Jago, Calatrava, and Alcantara, to the crown, was another expedient, by which

[33] Zurita, Anales de Arag. tom. vi. p. 22.

Ferdinand greatly augmented the revenue and power of the kings of Spain. These orders were instituted, in imitation of those of the Knights Templars and of St. John of Jerusalem, on purpose to wage perpetual war with the Mahometans, and to protect the pilgrims who visited Compostella, or other places of eminent sanctity in Spain. The zeal and superstition of the ages in which they were founded, prompted persons of every rank to bestow such liberal donations on those holy warriors, that, in a short time, they engrossed a considerable share in the property and wealth of the kingdom. The masterships of these orders came to be stations of the greatest power and opulence to which a Spanish nobleman could be advanced. These high dignities were in the disposal of the knights of the order, and placed the persons on whom they conferred them almost on a level with their sovereign.[34] Ferdinand, unwilling that the nobility, whom he considered as already too formidable, should derive such additional credit and influence from possessing the government of these wealthy fraternities, was solicitous to wrest it out of their hands, and to vest it in the crown. His measures for accomplishing this were wisely planned, and executed with vigor.[35] By address, by promises, and by threats, he prevailed on the knights of each order to place Isabella and him at the head of it. Innocent VIII and Alexander VI. gave this election the sanction

[34] Note XXXVI.

[35] Marian. Hist. lib. xxv. c. 5.

of papal authority;[36] and subsequent pontiffs rendered the annexation of these masterships to the crown perpetual.

While Ferdinand, by this measure, diminished the power and influence of the nobility, and added new lustre or authority to the crown, he was taking other important steps with a view to the same object. The sovereign jurisdiction, which the feudal barons exercised within their own territories, was the pride and distinction of their order. To have invaded openly a privilege which they prized so highly, and in defence of which they would have run so eagerly to arms, was a measure too daring for a prince of Ferdinand's cautious temper. He took advantage, however, of an opportunity which the state of his kingdoms and the spirit of his people presented him, in order to undermine what he durst not assault. The incessant depredations of the Moors, the want of discipline among the troops which were employed to oppose them, the frequent civil wars between the crown and the nobility, as well as the undiscerning rage with which the barons carried on their private wars with each other, filled all the provinces of Spain with disorder. Rapine, outrage, and murder, became so common, as not only to interrupt commerce, but in a great measure to suspend all intercourse between one place and another. That security and protection,

36 Zurita, Anales, tom. v. p. 22. Ælii Anton. Nebrissensis rerum a Ferdinand. et Elizab. gestarum decades ii. apud Schot. Script Hispan. i. 860.

which men expect from entering into civil society, ceased in a great degree. Internal order and police, while the feudal institutions remained in vigor, were so little objects of attention, and the administration of justice was so extremely feeble, that it would have been vain to have expected relief from the established laws or the ordinary judges. But the evil became so intolerable, and the inhabitants of cities, who were the chief sufferers, grew so impatient of this anarchy, that self-preservation forced them to have recourse to an extraordinary remedy. About the middle of the thirteenth century, the cities in the kingdom of Aragon, and, after their example, those in Castile, formed themselves into an association, distinguished by the name of the *holy brotherhood.* They exacted a certain contribution from each of the associated towns; they levied a considerable body of troops, in order to protect travellers, and to pursue criminals; they appointed judges, who opened their courts in various parts of the kingdom. Whoever was guilty of murder, robbery, or of any act that violated the public peace, and was seized by the troops of the *brotherhood*, was carried before judges of their nomination, who, without paying any regard to the exclusive and sovereign jurisdiction which the lord of the place might claim, tried and condemned the criminals. By the establishment of this fraternity, the prompt and impartial administration of justice was restored; and, together with it, internal tranquillity and order began to return. The nobles alone murmured at

this salutary institution. They complained of it as an encroachment on one of their most valuable privileges. They remonstrated against it in a high tone; and, on some occasions, refused to grant any aid to the crown, unless it were abolished. Ferdinand, however, was sensible not only of the good effects of the holy brotherhood with respect to the police of his kingdoms, but perceived its tendency to abridge, and at length to annihilate, the territorial jurisdiction of the nobility. He countenanced it on every occasion. He supported it with the whole force of royal authority; and, besides the expedients employed by him in common with the other monarchs of Europe, he availed himself of this institution, which was peculiar to his kingdom, in order to limit and abolish that independent jurisdiction of the nobility, which was no less inconsistent with the authority of the prince, than with the order of society.[37]

But though Ferdinand by these measures considerably enlarged the boundaries of his prerogative, and acquired a degree of influence and power far beyond what any of his predecessors had enjoyed, yet the limitations of the royal authority, as well as the barriers against its encroachments, continued to be many and strong. The spirit of liberty was vigorous among the people of Spain; the spirit of independence was high among the nobility; and though the love of glory, peculiar to the Spaniards in every period of their history, prompted them to

[37] Note XXXVII.

support Ferdinand with zeal in his foreign operations, and to afford him such aid as enabled him not only to undertake but to execute great enterprises; he reigned over his subjects with a jurisdiction less extensive than that of any of the great monarchs in Europe. It will appear from many passages in the following history, that, during a considerable part of the reign of his successor Charles V., the prerogative of the Spanish crown was equally circumscribed.

The ancient government and laws in France so nearly resembled those of the other feudal kingdoms, that such a detail with respect to them as was necessary, in order to convey some idea of the nature and effects of the peculiar institutions which took place in Spain, would be superfluous. In the view which I have exhibited of the means by which the French monarchs acquired such a full command of the national force of their kingdom as enabled them to engage in extensive schemes of foreign operation, I have already pointed out the great steps by which they advanced towards a more ample possession of political power, and a more uncontrolled exercise of their royal prerogative. All that now remains is to take notice of such particulars in the constitution of France as serve either to distinguish it from that of other countries, or tend to throw any light on the transactions of that period, to which the following History extends.

Under the French monarchs of the first race, the royal prerogative was very inconsiderable. The gen-

eral assemblies of the nation, which met annually at stated seasons, extended their authority to every department of government. The power of electing kings, of enacting laws, of redressing grievances, of conferring donations on the prince, of passing judgment in the last resort, with respect to every person and to every cause, resided in this great convention of the nation. Under the second race of kings, notwithstanding the power and splendor which the conquests of Charlemagne added to the crown, the general assemblies of the nation continued to possess extensive authority. The right of determining which of the royal family should be placed on the throne was vested in them. The princes, elevated to that dignity by their suffrage, were accustomed regularly to call and to consult them with respect to every affair of importance to the state, and without their consent no law was passed, and no new tax was levied.

But, by the time that Hugh Capet, the father of the third race of kings, took possession of the throne of France, such changes had happened in the political state of the kingdom as considerably affected the power and jurisdiction of the general assembly of the nation. The royal authority, in the hands of the degenerate posterity of Charlemagne, had dwindled into insignificance and contempt. Every considerable proprietor of land had formed his territory into a barony, almost independent of the sovereign. The dukes or governors of provinces, the counts or governors of towns and

small districts, and the great officers of the crown, had rendered these dignities, which originally were granted only during pleasure or for life, hereditary in their families. Each of these had usurped all the rights which hitherto had been deemed the distinctions of royalty, particularly the privileges of dispensing justice within their own domains, of coining money, and of waging war. Every district was governed by local customs, acknowledged a distinct lord, and pursued a separate interest. The formality of doing homage to their sovereign was almost the only act of subjection which those haughty barons would perform, and that bound them no farther than they were willing to acknowledge its obligation.[38]

In a kingdom broken into so many independent baronies, hardly any common principle of union remained; and the general assembly, in its deliberations, could scarcely consider the nation as forming one body, or establish common regulations to be of equal force in every part. Within the immediate domains of the crown, the king might publish laws, and they were obeyed, because there he was acknowledged as the only lord. But if he had aimed at rendering these laws general, that would have alarmed the barons as an encroachment upon the independence of their jurisdiction. The barons, when met in the great national convention, avoided, with no less care, the enacting of general laws to be observed in every part of the kingdom, because

[38] Note XXXVIII.

the execution of them must have been vested in the king, and would have enlarged that paramount power which was the object of their jealousy. Thus, under the descendants of Hugh Capet, the states-general (for that was the name by which the supreme assembly of the French nation came then to be distinguished) lost their legislative authority, or at least entirely relinquished the exercise of it. From that period, the jurisdiction of the states-general extended no farther than to the imposition of new taxes, the determination of questions with respect to the right of succession to the crown, the settling of the regency when the preceding monarch had not fixed it by his will, and the presenting remonstrances enumerating the grievances of which the nation wished to obtain redress.

As, during several centuries the monarchs of Europe seldom demanded extraordinary subsidies of their subjects, and the other events, which required the interposition of the states, rarely occurred, their meetings in France were not frequent. They were summoned occasionally by their kings, when compelled by their wants or by their fears to have recourse to the great convention of their people; but they did not, like the diet in Germany, the cortes in Spain, or the parliament in England, form an essential member of the constitution, the regular exertion of whose powers was requisite to give vigor and order to government.

When the states of France ceased to exercise legislative authority, the kings began to assume it. They ventured at first on acts of legislation with great reserve, and after taking every precaution that could prevent their subjects from being alarmed at the exercise of a new power. They did not at once issue their ordinances in a tone of authority and command. They treated with their subjects; they pointed out what was best; and allured them to comply with it. By degrees, however, as the prerogative of the crown extended, and as the supreme jurisdiction of the royal courts came to be established, the kings of France assumed more openly the style and authority of lawgivers; and, before the beginning of the fifteenth century, the complete legislative power was vested in the crown.[39]

Having secured this important acquisition, the steps which led to the right of imposing taxes were rendered few and easy. The people, accustomed to see their sovereigns issue ordinances, by their sole authority, which regulated points of the greatest consequence with respect to the property of their subjects, were not alarmed when they were required, by the royal edicts, to contribute certain sums towards supplying the exigencies of government, and carrying forward the measures of the nation. When Charles VII. and Louis XI. first ventured to exercise this new power, in the manner in which I have already described, the gradual

[39] Note XXXIX.

increase of the royal authority had so imperceptibly prepared the minds of the people of France for this innovation, that it excited no commotion in the kingdom, and seems scarcely to have given rise to any murmur or complaint.

When the kings of France had thus engrossed every power which can be exerted in government; when the right of making laws, of levying money, of keeping an army of mercenaries in constant pay, of declaring war, and of concluding peace, centred in the crown, the constitution of the kingdom, which, under the first race of kings was nearly democratical; which, under the second race, became an aristocracy; terminated, under the third race, in a pure monarchy. Everything that tended to preserve the appearance, or revive the memory, of the ancient mixed government, seems from that period to have been industriously avoided. During the long and active reign of Francis I., the variety as well as extent of whose operations obliged him to lay many heavy impositions on his subjects, the states-general of France were not once assembled, nor were the people once allowed to exert the power of taxing themselves, which, according to the original ideas of feudal government, was a right essential to every freeman.

Two things, however, remained, which moderated the exercise of the regal prerogative, and restrained it within such bounds as preserved the constitution of France from degenerating into mere despotism. The rights and privileges claimed by the nobility,

must be considered as one barrier against the absolute dominion of the crown. Though the nobles of France had lost that political power which was vested in their order as a body, they still retained the personal rights and pre-eminence which they derived from their rank. They preserved a consciousness of elevation above other classes of citizens; an exemption from burdens to which persons of inferior condition were subject; a contempt of the occupations in which they were engaged; the privilege of assuming ensigns that indicated their own dignity; a right to be treated with a certain degree of deference during peace; and a claim to various distinctions when in the field. Many of these pretensions were not founded on the words of statutes, or derived from positive laws; they were defined and ascertained by the maxims of honor, a title more delicate, but no less sacred. These rights, established and protected by a principle equally vigilant in guarding, and intrepid in defending them, are to the sovereign himself objects of respect and veneration. Wherever they stand in its way, the royal prerogative is bounded. The violence of a despot may exterminate such an order of men; but as long as it subsists, and its ideas of personal distinction remain entire, the power of the prince has limits.[40]

As in France the body of nobility was very numerous, and the individuals of which it was

[40] De l'Esprit des Loix, liv. ii. c. 4. Dr. Ferguson's Essay on the Hist. of Civil Society, part i. sect. 10.

composed retained a high sense of their own pre-eminence, to this we may ascribe, in a great measure, the mode of exercising the royal prerogative which peculiarly distinguishes the government of that kingdom. An intermediate order was placed between the monarch and his other subjects, and in every act of authority it became necessary to attend to its privileges, and not only to guard against any real violation of them, but to avoid any suspicion of supposing it to be possible that they might be violated. Thus a species of government was established in France, unknown in the ancient world, that of a monarchy, in which the power of the sovereign, though unconfined by any legal or constitutional restraint, has certain bounds set to it by the ideas which one class of his subjects entertain concerning their own dignity.

The jurisdiction of the parliaments in France, particularly that of Paris, was the other barrier which served to confine the exercise of the royal prerogative within certain limits. The parliament of Paris was originally the court of the kings of France, to which they committed the supreme administration of justice within their own domains, as well as the power of deciding with respect to all cases brought before it by appeals from the courts of the barons. When, in consequence of events and regulations which have been mentioned formerly, the time and place of its meeting were fixed; when not only the form of its procedure, but the principles on which it decided, were ren-

dered regular and consistent; when every cause of importance was finally determined there; and when the people became accustomed to resort thither as to the supreme temple of justice; the parliament of Paris rose to high estimation in the kingdom, its members acquired dignity, and its decrees were submitted to with deference. Nor was this the only source of the power and influence which the parliament obtained. The kings of France, when they first began to assume the legislative power, in order to reconcile the minds of their people to this new exertion of prerogative, produced their edicts and ordinances in the parliament of Paris, that they might be approved of and registered there, before they were published and declared to be of authority in the kingdom. During the intervals between the meetings of the states-general of the kingdom, or during those reigns in which the states-general were not assembled, the monarchs of France were accustomed to consult the parliament of Paris with respect to the most arduous affairs of government, and frequently regulated their conduct by its advice, in declaring war, in concluding peace, and in other transactions of public concern. Thus there was erected in the kingdom a tribunal which became the great depository of the laws, and, by the uniform tenor of its decrees, established principles of justice and forms of proceeding which were considered as so sacred, that even the sovereign power of the monarch durst not venture to disregard or to vio-

late them. The members of this illustrious body, though they neither possess legislative authority, nor can be considered as the representatives of the people, have availed themselves of the reputation and influence which they had acquired among their countrymen, in order to make a stand, to the utmost of their ability, against every unprecedented and exorbitant exertion of the prerogative. In every period of the French history, they have merited the praise of being the virtuous but feeble guardians of the rights and privileges of the nation.[41]

After taking this view of the political state of France, I proceed to consider that of the German empire, from which Charles V. derived his title of highest dignity. In explaining the constitution of this great and complex body at the beginning of the sixteenth century, I shall avoid entering into such a detail as would involve my readers in that inextricable labyrinth, which is formed by the multiplicity of its tribunals, the number of its members, their interfering rights, and by the endless discussions or refinements of the public lawyers of Germany, with respect to all these.

The empire of Charlemagne was a structure erected in so short a time that it could not be permanent. Under his immediate successor it began to totter, and soon after fell to pieces. The crown of Germany was separated from that of France, and the descendants of Charlemagne established two

[41] Note XL.

great monarchies so situated as to give rise to a perpetual rivalship and enmity between them. But the princes of the race of Charlemagne who were placed on the imperial throne, were not altogether so degenerate as those of the same family who reigned in France. In the hands of the former, the royal authority retained some vigor, and the nobles of Germany, though possessed of extensive privileges as well as ample territories, did not so early attain independence. The great offices of the crown continued to be at the disposal of the sovereign, and during a long period, fiefs remained in their original state, without becoming hereditary and perpetual in the families of the persons to whom they had been granted.

At length the German branch of the family of Charlemagne became extinct, and his feeble descendants who reigned in France had sunk into such contempt, that the Germans, without looking towards them, exercised the right inherent in a free people; and in the general assembly of the nation elected Conrad, count of Franconia, emperor. After him Henry of Saxony, and his descendants, the three Othos, were placed, in succession, on the imperial throne, by the suffrages of their countrymen. The extensive territories of the Saxon emperors, their eminent abilities and enterprising genius, not only added new vigor to the imperial dignity, but raised it to higher power and pre-eminence. Otho the Great marched at the head of a numerous army into Italy, and, after the example of Charlemagne,

gave law to that country. Every power there recognized his authority. He created popes, and deposed them, by his sovereign mandate. He annexed the kingdom of Italy to the German empire. Elated with his success, he assumed the title of Cæsar Augustus.[42] A prince born in the heart of Germany pretended to be the successor of the emperors of ancient Rome, and claimed a right to the same power and prerogative. [952.]

But while the emperors, by means of these new titles and new dominions, gradually acquired additional authority and splendor, the nobility of Germany had gone on at the same time extending their privileges and jurisdiction. The situation of affairs was favorable to their attempts. The vigor which Charlemagne had given to government quickly relaxed. The incapacity of some of his successors was such as would have encouraged vassals less enterprising than the nobles of that age to have claimed new rights, and to have assumed new powers. The civil wars in which other emperors were engaged obliged them to pay perpetual court to their subjects, on whose support they depended, and not only to connive at their usurpations, but to permit, and even to authorize them. Fiefs gradually became hereditary. They were transmitted not only in the direct, but also in the collateral line. The investiture of them was demanded not only by male but by female heirs. Every baron began to exercise sovereign jurisdiction within his own do-

[42] Annalista Saxo, &c. ap. Struv. Corp. vol. i. p. 246.

mains; and the dukes and counts of Germany took wide steps towards rendering their territories distinct and independent states.[43] The Saxon emperors observed their progress, and were aware of its tendency. But as they could not hope to humble vassals already grown too potent, unless they had turned their whole force as well as attention to that enterprise, and as they were extremely intent on their expeditions into Italy, which they could not undertake without the concurrence of their nobles, they were solicitous not to alarm them by any direct attack on their privileges and jurisdictions. They aimed, however, at undermining their power. With this view, they inconsiderately bestowed additional territories, and accumulated new honors on the clergy, in hopes that this order might serve as a counterpoise to that of the nobility in any future struggle.[44]

The unhappy effects of this fatal error in policy were quickly felt. Under the emperors of the Franconian and Swabian lines, whom the Germans, by their voluntary election, placed on the imperial throne, a new face of things appeared, and a scene was exhibited in Germany which astonished all Christendom at that time, and in the present age appears almost incredible. The popes, hitherto dependent on the emperors, and indebted for power as well as dignity to their beneficence and protection, began to claim a superior jurisdiction; and, in vir-

[43] Pfeffel, Abrégé, p. 120, 152. Lib. Feudor. tit. i.

[44] Pfeffel, Abrégé, p. 154.

tue of authority which they pretended to derive from heaven, tried, condemned, excommunicated, and deposed their former masters. Nor is this to be considered merely as a frantic sally of passion in a pontiff intoxicated with high ideas concerning the extent of priestly domination and the plenitude of papal authority. Gregory VII. was able as well as daring. His presumption and violence were accompanied with political discernment and sagacity. He had observed that the princes and nobles of Germany had acquired such considerable territories and such extensive jurisdiction as rendered them not only formidable to the emperors, but disposed them to favor any attempt to circumscribe their power. He foresaw that the ecclesiastics of Germany, raised almost to a level with its princes, were ready to support any person who would stand forth as the protector of their privileges and independence. With both of these Gregory negotiated, and had secured many devoted adherents among them before he ventured to enter the lists against the head of the empire.

He began his rupture with Henry IV. upon a pretext that was popular and plausible. He complained of the venality and corruption with which the emperor had granted the investiture of benefices to ecclesiastics. He contended that this right belonged to him as the head of the Church; he required Henry to confine himself within the bounds of his civil jurisdiction, and to abstain for the future from such sacrilegious encroachments on the spirit-

ual dominion. All the censures of the Church were denounced against Henry, because he refused to relinquish those powers which his predecessors had uniformly exercised. The most considerable of the German princes and ecclesiastics were excited to take arms against him. His mother, his wife, his sons, were wrought upon to disregard all the ties of blood as well as of duty, and to join the party of his enemies.[45] Such were the successful arts with which the court of Rome inflamed the superstitious zeal, and conducted the factious spirit of the Germans and Italians, that an emperor, distinguished not only for many virtues, but possessed of considerable talents, was at length obliged to appear as a supplicant at the gate of the castle in which the pope resided, and to stand there three days, barefooted, in the depth of winter, imploring a pardon, which at length he obtained with difficulty.[46] [1077.]

This act of humiliation degraded the imperial dignity. Nor was the depression momentary only. The contest between Gregory and Henry gave rise to the two great factions of the Guelfs and Ghibellines; the former of which, supporting the pretensions of the popes, and the latter defending the rights of the emperor, kept Germany and Italy in perpetual agitation during three centuries. A regular system for humbling the emperors and circumscribing their power was formed, and adhered to uniformly throughout that period. The popes, the free states in Italy, the nobility, and ecclesiastics of

[45] Annal. German. ap. Struv. i. p. 325. [46] Note XLI.

Germany, were all interested in its success; and notwithstanding the return of some short intervals of vigor, under the administration of a few able emperors, the imperial authority continued to decline. During the anarchy of the long interregnum subsequent to the death of William of Holland, it dwindled down almost to nothing. Rodulph of Hapsburg, the founder of the house of Austria, and who first opened the way to its future grandeur, was at length elected emperor, not that he might re-establish and extend the imperial authority, but because his territories and influence were so inconsiderable as to excite no jealousy in the German princes, who were willing to preserve the forms of a constitution, the power and vigor of which they had destroyed. Several of his successors were placed on the imperial throne from the same motive; and almost every remaining prerogative was wrested out of the hands of feeble princes unable to exercise or to defend them.

During this period of turbulence and confusion, the constitution of the Germanic body underwent a total change. The ancient names of courts and magistrates, together with the original forms and appearance of policy, were preserved; but such new privileges and jurisdiction were assumed, and so many various rights established, that the same species of government no longer subsisted. The princes, the great nobility, the dignified ecclesiastics, the free cities, had taken advantage of the interregnum which I have mentioned to establish

or to extend their usurpations. They claimed and exercised the right of governing their respective territories with full sovereignty. They acknowledged no superior with respect to any point relative to the interior administration and police of their domains. They enacted laws, imposed taxes, coined money, declared war, concluded peace, and exerted every prerogative peculiar to independent states. The ideas of order and political union which had originally formed the various provinces of Germany into one body were almost entirely lost; and the society must have dissolved, if the forms of feudal subordination had not preserved such an appearance of connection or dependence among the various members of the community as preserved it from falling to pieces.

This bond of union, however, was extremely feeble; and hardly any principle remained in the German constitution, of sufficient force to maintain public order, or even to ascertain personal security. From the accession of Rodulph of Hapsburg, to the reign of Maximilian, the immediate predecessor of Charles V., the empire felt every calamity which a state must endure when the authority of government is so much relaxed as to have lost its proper degree of vigor. The causes of dissension among that vast number of members which composed the Germanic body were infinite and unavoidable. These gave rise to perpetual private wars, which were carried on with all the violence that usually accompanies resentment, when unre-

strained by superior authority. Rapine, outrage, exactions, became universal. Commerce was interrupted; industry suspended; and every part of Germany resembled a country which an enemy had plundered and left desolate.[47] The variety of expedients employed with a view to restore order and tranquillity, prove that the grievances occasioned by this state of anarchy had grown intolerable. Arbiters were appointed to terminate the differences among the several states. The cities united in a league, the object of which was to check the rapine and extortions of the nobility. The nobility formed confederacies, on purpose to maintain tranquillity among their own order. Germany was divided into several circles, in each of which a provincial and partial jurisdiction was established, to supply the place of a public and common tribunal.[48]

But all these remedies were so ineffectual, that they served only to demonstrate the violence of that anarchy which prevailed, and the insufficiency of the means employed to correct it. At length Maximilian re-established public order in the empire, by instituting the Imperial Chamber, a tribunal composed of judges named partly by the emperor, partly by the several states, and vested with authority to decide finally concerning all differences among the members of the Germanic body.

[47] See above, pp. 50, 51, and Note XXI. Datt. de Pace Publica Imper. p. 25, no. 53, p. 28, no. 26, p. 35, no. 11.

[48] Datt. passim. Struv. Corp. Hist. i. 510, &c.

A few years after, by giving a new form to the Aulic Council, which takes cognizance of all feudal causes, and such as belong to the emperor's immediate jurisdiction, he restored some degree of vigor to the imperial authority. [1512.]

But notwithstanding the salutary effects of these regulations and improvements, the political constitution of the German empire, at the commencement of the period of which I propose to write the history, was of a species so peculiar as not to resemble perfectly any form of government known either in the ancient or modern world. It was a complex body, formed by the association of several states, each of which possessed sovereign and independent jurisdiction within its own territories. Of all the members which composed this united body, the emperor was the head. In his name, all decrees and regulations, with respect to points of common concern, were issued; and to him the power of carrying them into execution was committed. But this appearance of monarchical power in the emperor was more than counterbalanced by the influence of the princes and states of the empire in every act of administration. No law extending to the whole body could pass, no resolution that affected the general interest could be taken, without the approbation of the diet of the empire. In this assembly, every sovereign prince and state of the Germanic body had a right to be present, to deliberate, and to vote. The decrees, or *recesses*, of the diet were the laws of the em-

pire, which the emperor was bound to ratify and enforce.

Under this aspect, the constitution of the empire appears a regular confederacy, similar to the Achæan league in ancient Greece, or to that of the United Provinces, and of the Swiss Cantons, in modern times. But if viewed in another light, striking peculiarities in its political state present themselves. The Germanic body was not formed by the union of members altogether distinct and independent. All the princes and states, joined in this association, were originally subject to the emperors, and acknowledge them as sovereigns. Besides this, they originally held their lands as imperial fiefs, and in consequence of this tenure owed the emperor all those services which feudal vassals are bound to perform to their liege lord. But though this political subjection was entirely at an end, and the influence of the feudal relation much diminished, the ancient forms and institutions, introduced while the emperors governed Germany with authority not inferior to that which the other monarchs of Europe possessed, still remained. Thus an opposition was established between the genius of the government, and the forms of administration in the German empire. The former considered the emperor only as the head of a confederacy, the members of which, by their voluntary choice, have raised him to that dignity; the latter seemed to imply, that he is really invested with sovereign power. By this circumstance, such

principles of hostility and discord were interwoven into the frame of the Germanic body as affected each of its members, rendering their interior union incomplete, and their external efforts feeble and irregular. The pernicious influence of this defect, inherent in the constitution of the empire, is so considerable, that, without attending to it, we cannot fully comprehend many transactions in the reign of Charles V., or form just ideas concerning the genius of the German government.

The emperors of Germany, at the beginning of the sixteenth century, were distinguished by the most pompous titles, and by such ensigns of dignity as intimated their authority to be superior to that of all other monarchs. The greatest princes of the empire attended, and served them, on some occasions, as the officers of their household. They exercised prerogatives which no other sovereign ever claimed. They retained pretensions to all the extensive powers which their predecessors had enjoyed in any former age. But, at the same time, instead of possessing that ample domain which had belonged to the ancient emperors of Germany, and which stretched from Basil to Cologne, along both banks of the Rhine,[49] they were stripped of all territorial property, and had not a single city, a single castle, a single foot of land, that belonged to them as heads of the empire. As their domain was alienated, their stated revenues were reduced almost to nothing; and the extraor-

[49] Pfeffel, Abrégé, &c. p. 241.

dinary aids which on a few occasions they obtained were granted sparingly and paid with reluctance. The princes and states of the empire, though they seemed to recognize the imperial authority, were subjects only in name, each of them possessing a complete municipal jurisdiction within the precincts of his own territories.

From this ill-compacted frame of government effects that were unavoidable resulted. The emperors, dazzled with the splendor of their titles and the external signs of vast authority, were apt to imagine themselves to be the real sovereigns of Germany, and were led to aim continually at recovering the exercise of those powers which the forms of the constitution seemed to vest in them, and which their predecessors, Charlemagne and the Othos, had actually enjoyed. The princes and states, aware of the nature as well as the extent of these pretensions, were perpetually on their guard, in order to watch all the motions of the imperial court, and to circumscribe its power within limits still more narrow. The emperors, in support of their claims, appealed to ancient forms and institutions, which the states held to be obsolete. The states founded their rights on recent practice and modern privileges, which the emperors considered as usurpations.

This jealousy of the imperial authority, together with the opposition between it and the rights of the states, increased considerably from the time that the emperors were elected, not by the col-

lective body of German nobles, but by a few princes of chief dignity. During a long period, all the members of the Germanic body had a right to assemble, and to make choice of the person whom they appointed to be their head. But amidst the violence and anarchy which prevailed for several centuries in the empire, seven princes who possessed the most extensive territories, and who had obtained an hereditary title to the great offices of the state, acquired the exclusive privilege of nominating the emperor. This right was confirmed to them by the Golden Bull; the mode of exercising it was ascertained, and they were dignified with the appellation of *electors*. The nobility and free cities being thus stripped of a privilege which they had once enjoyed, were less connected with a prince towards whose elevation they had not contributed by their suffrages, and came to be more apprehensive of his authority. The electors, by their extensive power, and the distinguishing privileges which they possessed, became formidable to the emperors with whom they were placed almost on a level in several acts of jurisdiction. Thus the introduction of the electoral college into the empire, and the authority which it acquired, instead of diminishing, contributed to strengthen, the principles of hostility and discord in the Germanic constitution.

These were farther augmented by the various and repugnant forms of civil policy in the several states which composed the Germanic body. It is

no easy matter to render the union of independent states perfect and entire, even when the genius and forms of their respective governments happen to be altogether similar. But in the German empire, which was a confederacy of princes, of ecclesiastics, and of free cities, it was impossible that they could incorporate thoroughly. The free cities were small republics, in which the maxims and spirit peculiar to that species of government prevailed. The princes and nobles, to whom supreme jurisdiction belonged, possessed a sort of monarchical power within their own territories, and the forms of their interior administration nearly resembled those of the great feudal kingdoms. The interests, the ideas, the objects of states so differently constituted, cannot be the same. Nor could their common deliberations be carried on with the same spirit, while the love of liberty, and attention to commerce, were the reigning principles in the cities, while the desire of power, and ardor for military glory, were the governing passions of the princes and nobility.

The secular and ecclesiastical members of the empire were as little fitted for union as the free cities and the nobility. Considerable territories had been granted to several of the German bishoprics and abbeys, and some of the highest offices in the empire having been annexed to them inalienably, were held by the ecclesiastics raised to these dignities. The younger sons of noblemen of the second order, who had devoted themselves to the

Church, were commonly promoted to these stations of eminence and power; and it was no small mortification to the princes and great nobility to see persons raised from an inferior rank to the same level with themselves, or even exalted to superior dignity. The education of these churchmen, the genius of their profession, and their connection with the court of Rome, rendered their character as well as their interest different from those of the other members of the Germanic body, with whom they were called to act in concert. Thus another source of jealousy and variance was opened which ought not to be overlooked when we are searching into the nature of the German constitution.

To all these causes of dissension may be added one more, arising from the unequal distribution of power and wealth among the states of the empire. The electors, and other nobles of the highest rank, not only possessed sovereign jurisdiction, but governed such extensive, populous, and rich countries, as rendered them great princes. Many of the other members, though they enjoyed all the rights of sovereignty, ruled over such petty domains, that their real power bore no proportion to this high prerogative. A well-compacted and vigorous confederacy could not be formed of such dissimilar states. The weaker were jealous, timid, and unable either to assert or to defend their just privileges. The more powerful were apt to assume and to become oppressive. The electors and emperors, by turns, endeavored to extend their own

authority, by encroaching on those feeble members of the Germanic body, who sometimes defended their rights with much spirit, but more frequently, being overawed or corrupted, they tamely surrendered their privileges, or meanly favored the designs formed against them.[50]

After contemplating all these principles of disunion and opposition in the constitution of the German empire, it will be easy to account for the want of concord and uniformity, conspicuous in its councils and proceedings. That slow, dilatory, distrustful, and irresolute spirit, which characterizes all its deliberations, will appear natural in a body, the junction of whose members was so incomplete, the different parts of which were held together by such feeble ties, and set at variance by such powerful motives. But the empire of Germany, nevertheless, comprehended countries of such great extent, and was inhabited by such a martial and hardy race of men, that when the abilities of an emperor, or zeal for any common cause, could rouse this unwieldy body to put forth its strength, it acted with almost irresistible force. In the following history we shall find, that as the measures on which Charles V was most intent were often thwarted or rendered abortive by the spirit of jealousy and division peculiar to the Germanic constitution; so it was by the influence which he acquired over the princes of the empire, and by engaging them to co-operate with him, that

[50] Note XLII.

he was enabled to make some of the greatest efforts which distinguish his reign.

The Turkish history is so blended, during the reign of Charles V., with that of the great nations in Europe, and the Ottoman Porte interposed so often, and with such decisive influence, in the wars and negotiations of the Christian princes, that some previous account of the state of government in that great empire is no less necessary for the information of my readers than those views of the constitution of other kingdoms which I have already exhibited to them.

It has been the fate of the Southern and more fertile parts of Asia, at different periods, to be conquered by that warlike and hardy race of men who inhabit the vast country known to the ancients by the name of Scythia, and among the moderns by that of Tartary. One tribe of these people, called Turks or Turcomans, extended its conquests, under various leaders, and during several centuries, from the shore of the Caspian Sea to the Straits of the Dardanelles. Towards the middle of the fifteenth century, these formidable conquerors took Constantinople by storm, and established the seat of their government in that imperial city. Greece, Moldavia, Wallachia, and the other provinces of the ancient kingdoms of Thrace and Macedonia, together with part of Hungary, were subjected to their power.

But though the seat of the Turkish government was fixed in Europe, and the sultans obtained pos-

session of such extensive dominions in that quarter of the globe, the genius of their policy continued to be purely Asiatic, and may be properly termed a despotism, in contradistinction to those monarchical and republican forms of government which we have been hitherto contemplating. The supreme power was vested in sultans of the Ottoman race, that blood being deemed so sacred, that no other was thought worthy of the throne. From this elevation, these sovereigns could look down and behold all their subjects reduced to the same level before them. The maxims of Turkish policy do not authorize any of those institutions which, in other countries, limit the exercise or moderate the rigor of monarchical power: they admit neither of any great court with constitutional and permanent jurisdiction to interpose, both in enacting laws, and in superintending the execution of them; nor of a body of hereditary nobles, whose sense of their own pre-eminence, whose consciousness of what is due to their rank and character, whose jealousy of their privileges, circumscribe the authority of the prince, and serve not only as a barrier against the excesses of his caprice, but stand as an intermediate order between him and the people. Under the Turkish government, the political condition of every subject is equal. To be employed in the service of the sultan is the only circumstance that confers distinction. Even this distinction is rather official than personal, and so closely annexed to the station in which any individual serves, that it is

scarcely communicated to the persons of those who are placed in them. The highest dignity in the empire does not give any rank or pre-eminence to the family of him who enjoys it. As every man, before he is raised to any station of authority, must go through the preparatory discipline of a long and servile obedience,[51] the moment he is deprived of power, he and his posterity return to the same condition with other subjects, and sink back into obscurity. It is the distinguishing and odious characteristic of Eastern despotism, that it annihilates all other ranks of men, in order to exalt the monarch; that it leaves nothing to the former, while it gives everything to the latter; that it endeavors to fix in the minds of those who are subject to it, the idea of no relation between men but that of a master and of a slave; the former destined to command and to punish, the latter formed to tremble and obey.[52]

But as there are circumstances which frequently obstruct or defeat the salutary effects of the best-regulated governments, there are others which contribute to mitigate the evils of the most defective forms of policy. There can, indeed, be no constitutional restraints upon the will of a prince in a despotic government; but there may be such as are accidental. Absolute as the Turkish sultans are, they feel themselves circumscribed both by religion, the principle on which their authority is

[51] State of the Turkish Empire by Rycaut, p. 25.

[52] Note XLIII.

founded,[53] and by the army, the instrument which they must employ in order to maintain it. Wherever religion interposes, the will of the sovereign must submit to its decrees. When the Koran hath prescribed any religious rite, hath enjoined any moral duty, or hath confirmed, by its sanction, any political maxim, the command of the sultan cannot overturn that which a higher authority hath established. The chief restrictions, however, on the will of the sultans is imposed by the military power. An armed force must surround the throne of every despot, to maintain his authority, and to execute his commands. As the Turks extended their empire over nations which they did not exterminate, but reduce to subjection, they found it necessary to render their military establishment numerous and formidable. Amruth, their third sultan, in order to form a body of troops devoted to his will, that might serve as the immediate guards of his person and dignity, commanded his officers to seize annually, as the imperial property, the fifth part of the youth taken in war. These, after being instructed in the Mahometan religion, inured to obedience by severe discipline, and trained to warlike exercises, were formed into a body, distinguished by the name of *janizaries*, or new soldiers. Every sentiment which enthusiasm can inspire, every mark of distinction that the favor of the prince could confer, were employed in order to animate this body with martial ardor, and with a consciousness

[53] Rycaut, p. 8.

of its own pre-eminence.[54] The janizaries soon became the chief strength and pride of the Ottoman armies; and, by their number as well as reputation, were distinguished above all the troops, whose duty it was to attend on the person of the sultans.[55] [1362.]

Thus, as the supreme power in every society is possessed by those who have arms in their hands, this formidable body of soldiers, destined to be the instruments of enlarging the sultan's authority, acquired, at the same time, the means of controlling it. The janizaries in Constantinople, like the prætorian bands in ancient Rome, quickly perceived all the advantages which they derived from being stationed in the capital; from their union under one standard; and from being masters of the person of the prince. The sultans became no less sensible of their influence and importance. The *capiculy*, or soldiery of the Porte, was the only power in the empire that a sultan or his vizier had reason to dread. To preserve the fidelity and attachment of the janizaries was the great art of government, and the principal object of attention in the policy of the Ottoman court. Under a monarch, whose abilities and vigor of mind fit him for command, they are obsequious instruments; execute whatever he enjoins, and render his power irresistible. Under feeble princes, or such as are unfortunate, they become turbulent and mutinous; assume the

54 Prince Cantemir's History of the Othman Empire, p. 87.

55 Note XLIV.

tone of masters; degrade and exalt sultans at pleasure; and teach those to tremble, on whose nod, at other times, life and death depend.

From Mahomet II., who took Constantinople, to Solyman the Magnificent, who began his reign a few months after Charles V. was placed on the imperial throne of Germany, a succession of illustrious princes ruled over the Turkish empire. By their great abilities, they kept their subjects of every order, military as well as civil, submissive to government, and had the absolute command of whatever force their vast empire was able to exert. Solyman, in particular, who is known to the Christians chiefly as a conqueror, but is celebrated in the Turkish annals as the great lawgiver who established order and police in their empire, governed, during his long reign with no less authority than wisdom. He divided his dominions into several districts; he appointed the number of soldiers which each should furnish; he appropriated a certain proportion of the land in every province for their maintenance; he regulated, with a minute accuracy, everything relative to their discipline, their arms, and the nature of their service. He put the finances of the empire into an orderly train of administration; and, though the taxes in the Turkish dominions, as well as in the other despotic monarchies of the East, are far from being considerable, he supplied that defect by an attentive and severe economy.

Nor was it only under such sultans as Solyman,

whose talents were no less adapted to preserve internal order than to conduct the operations of war, that the Turkish empire engaged with advantage in its contests with the Christian states. The long succession of able princes, which I have mentioned, had given such vigor and firmness to the Ottoman government, that it seems to have attained, during the sixteenth century, the highest degree of perfection of which its constitution was capable. Whereas the great monarchies in Christendom were still far from that state which could enable them to act with a full exertion of their force. Besides this, the Turkish troops in that age possessed every advantage which arises from superiority in military discipline. At the time when Solyman began his reign, the janizaries had been embodied near a century and a half; and, during that long period, the severity of their military discipline had in no degree relaxed. The other soldiers, drawn from the provinces of the empire, had been kept almost continually under arms, in the various wars which the sultans had carried on, with hardly an interval of peace. Against troops thus trained and accustomed to service, the forces of the Christian powers took the field with great disadvantage. The most intelligent, as well as impartial authors of the sixteenth century, acknowledge and lament the superior attainments of the Turks, in the military art.[56] The success which almost uniformly attended their arms, in all their wars, demonstrates the justness

[56] Note XLV.

of this observation. The Christian armies did not acquire that superiority over the Turks which they now possess, until the long establishment of standing forces had improved military discipline among the former; and until various causes and events, which it is not in my province to explain, had corrupted or abolished their ancient warlike institutions among the latter.

PROOFS AND ILLUSTRATIONS.

Note I. — Sect. I. p. 3.

The consternation of the Britons, when invaded by the Picts and Caledonians, after the Roman legions were called out of the island, may give some idea of the degree of debasement to which the human mind was reduced by long servitude under the Romans. In their supplicatory letter to Ætius, which they call the *Groans of Britain*, "We know not (say they) which way to turn us. The barbarians drive us to the sea, and the sea forces us back on the barbarians; between which we have only the choice of two deaths, either to be swallowed up by the waves, or to be slain by the sword." Histor. Gildæ, ap. Gale, Hist. Britan. Script. p. 6. One can hardly believe this dastardly race to be descendants of that gallant people who repulsed Cæsar, and defended their liberty so long against the Roman arms.

Note II. — Sect. I. p. 5.

The barbarous nations were not only illiterate, but regarded literature with contempt. They found the inhabitants of all the provinces of the empire sunk in ci-

feminacy, and averse to war. Such a character was the object of scorn to a high-spirited and gallant race of men. "When we would brand an enemy," says Luitprandus, "with the most disgraceful and contumelious appellation, we call him a Roman; hoc solo, id est *Romani* nomine, quicquid ignobilitatis, quicquid timiditatis, quicquid avaritiæ, quicquid luxuriæ, quicquid mendacii, immo quicquid vitiorum est comprehendentes." Luitprandi Legatio apud Murat. Scriptor. Italic. vol. ii. pars i. p. 481. This degeneracy of manners, illiterate barbarians imputed to their love of learning. Even after they settled in the countries which they had conquered, they would not permit their children to be instructed in any science; "For (said they) instruction in the sciences tends to corrupt, enervate, and depress the mind; and he who has been accustomed to tremble under the rod of a pedagogue will never look on a sword or a spear with an undaunted eye." Procop. de Bello Gothor. lib. i. p. 4, ap. Script. Byz. edit. Venet. vol. i. A considerable number of years elapsed before nations so rude, and so unwilling to learn, could produce historians capable of recording their transactions, or of describing their manners and institutions. By that time the memory of their ancient condition was in a great measure lost, and few monuments remained to guide their first writers to any certain knowledge of it. If one expects to receive any satisfactory account of the manners and laws of the Goths, Lombards, or Franks, during their residence in those countries where they were originally seated, from Jornandes, Paulus Warnefridus, or Gregory of Tours, the earliest and most authentic historians of these people, he will be miserably disappointed. Whatever imperfect knowledge has been conveyed to us of their ancient state, we owe not to their own writers, but to the Greek and Roman historians.

Note III. — Sect. I. p. 6.

A circumstance, related by Priscus, in his history of the embassy to Attila, king of the Huns, gives a striking view of the enthusiastic passion for war which prevailed among the barbarous nations. When the entertainment, to which that fierce conqueror admitted the Roman ambassadors, was ended, two Scythians advanced towards Attila, and recited a poem, in which they celebrated his victories and military virtues. All the Huns fixed their eyes with attention on the bards. Some seemed to be delighted with the verses; others remembering their own battles and exploits, exulted with joy; while such as were become feeble through age, burst out into tears, bewailing the decay of their vigor, and the state of inactivity in which they were now obliged to remain. Excerpta ex Historia Prisci Rhetoris, ap. Byz. Hist. Script. vol. i. p. 45.

Note IV. — Sect. I. p. 12.

A remarkable confirmation of both parts of this reasoning occurs in the history of England. The Saxons carried on the conquest of that country with the same destructive spirit which distinguished the other barbarous nations. The ancient inhabitants of Britain were either exterminated, or forced to take shelter among the mountains of Wales, or reduced to servitude. The Saxon government, laws, manners, and language, were of consequence introduced into Britain, and were so perfectly established, that all memory of the institutions previous to their conquest of the country was, in a great measure, lost. The very reverse of this happened in a subsequent revolution. A single victory placed William the Norman on the throne of England. The

Saxon inhabitants, though oppressed, were not exterminated. William employed the utmost efforts of his power and policy to make his new subjects conform in everything to the Norman standard, but without success. The Saxons, though vanquished, were far more numerous than their conquerors; when the two races began to incorporate, the Saxon laws and manners gradually gained ground. The Norman institutions became unpopular and odious; many of them fell into disuse: and in the English constitution and language at this day many essential parts are manifestly of Saxon, not of Norman extraction.

Note V. — Sect. I. p. 13.

Procopius, the historian, declines, from a principle of benevolence, to give any particular detail of the cruelties of the Goths: "Lest," says he, "I should transmit a monument and example of inhumanity to succeeding ages," Proc. de Bello Goth. lib. iii. cap. 10, ap. Byz. Script. vol. i. p. 126. But as the change which I have pointed out as a consequence of the settlement of the barbarous nations in the countries formerly subject to the Roman empire could not have taken place if the greater part of the ancient inhabitants had not been extirpated, an event of such importance and influence merits a more particular illustration. This will justify me for exhibiting some part of that melancholy spectacle, over which humanity prompted Procopius to draw a veil. I shall not, however, disgust my readers by a minute narration; but rest satisfied with collecting some instances of the devastations made by two of the many nations which settled in the empire. The Vandals were the first of the barbarians who invaded Spain. It was one of the richest and most populous of the Roman provinces:

the inhabitants had been distinguished for courage, and had defended their liberty against the arms of Rome with greater obstinacy and during a longer course of years than any nation in Europe. But so entirely were they enervated by their subjection to the Romans, that the Vandals, who entered the kingdom A. D. 409, completed the conquest of it with such rapidity, that, in the year 411, these barbarians divided it among them, by casting lots. The desolation occasioned by their invasion is thus described by Idatius, an eyewitness: "The barbarians wasted everything with hostile cruelty. The pestilence was no less destructive. A dreadful famine raged to such a degree, that the living were constrained to feed on the dead bodies of their fellow-citizens; and all these terrible plagues desolated at once the unhappy kingdoms." Idatii Chron. ap. Biblioth. Patrum, vol. vii. p. 1233, edit. Ludg. 1677. The Goths having attacked the Vandals in their new settlements, a fierce war ensued; the country was plundered by both parties; the cities which had escaped from destruction in the first invasion of the Vandals were now laid in ashes, and the inhabitants exposed to suffer everything that the wanton cruelty of barbarians could inflict. Idatius describes these scenes of inhumanity, ibid. p. 1235, b. 1236, c. f. A similar account of their devastations is given by Isidorus Hispalensis, and other contemporary writers. Isid. Chron. ap. Grot. Hist. Goth. 732. From Spain the Vandals passed over into Africa, A. D. 428. Africa was, next to Egypt, the most fertile of the Roman provinces. It was one of the granaries of the empire, and is called by an ancient writer the soul of the commonwealth. Though the army with which the Vandals invaded it did not exceed 30,000 fighting men, they became absolute masters of the province in less than two years. A contemporary author gives a dreadful

account of the havoc which they made: "They found a province well cultivated, and enjoying plenty, the beauty of the whole earth. They carried their destructive arms into every corner of it; they dispeopled it by their devastations, exterminating everything with fire and sword. They did not even spare the vines and fruit-trees, that those, to whom caves and inaccessible mountains had afforded a retreat might find no nourishment of any kind. Their hostile rage could not be satiated, and there was no place exempted from the effects of it. They tortured their prisoners with the most exquisite cruelty, that they might force from them a discovery of their hidden treasures. The more they discovered, the more they expected, and the more implacable they became. Neither the infirmities of age nor of sex; neither the dignity of nobility nor the sanctity of the sacerdotal office, could mitigate their fury; but the more illustrious their prisoners were, the more barbarously they insulted them. The public buildings, which resisted the violence of the flames, they levelled with the ground. They left many cities without an inhabitant. When they approached any fortified place which their undisciplined army could not reduce, they gathered together a multitude of prisoners, and putting them to the sword, left their bodies unburied, that the stench of the carcasses might oblige the garrison to abandon it." Victor Vitensis de Persecutione Africana, ap. Bibl. Patrum, vol. viii. p. 666. St. Augustin, an African, who survived the conquest of his country by the Vandals some years, gives a similar description of their cruelties. Opera, vol. x. p. 372, edit. 1616. About a hundred years after the settlement of the Vandals in Africa, Belisarius attacked and dispossessed them. Procopius, a contemporary historian, describes the devastation which that war occasioned. "Africa," says he, "was so entirely

dispeopled, that one might travel several days in it without meeting one man; and it is no exaggeration to say, that in the course of the war five millions of persons perished." Proc. Hist. Arcana, cap. 18, ap. Byz. Script. vol. i. p. 315. I have dwelt longer upon the calamities of this province, because they are described not only by contemporary authors, but by eye-witnesses. The present state of Africa confirms their testimony. Many of the most flourishing and populous cities with which it was filled were so entirely ruined, that no vestiges remain to point out where they were situated. That fertile territory, which sustained the Roman empire, still lies in a great measure uncultivated; and that province, which Victor, in his barbarous Latin, called *Speciositas totius terræ florentis*, is now the retreat of pirates and banditti.

While the Vandals laid waste a great part of the empire, the Huns desolated the remainder. Of all the barbarous tribes, they were the fiercest and most formidable. Ammianus Marcellinus, a contemporary author, and one of the best of the later historians, gives an account of their policy and manners, which nearly resemble those of the Scythians described by the ancients, and of the Tartars known to the moderns. Some parts of their character, and several of their customs, are not unlike those of the savages in North America. Their passion for war was extreme. "As in polished societies (says Ammianus) ease and tranquillity are courted, they delight in war and dangers. He who falls in battle is reckoned happy. They who die of old age or of disease are deemed infamous. They boast, with the utmost exultation, of the number of enemies whom they have slain, and, as the most glorious of all ornaments, they fasten the scalps of those who have fallen by their hands to the trappings of their horses." Ammian. Marc. lib. xxxi. p.

477, edit. Gronov. Ludg. 1693. — Their incursions into the empire began in the fourth century; and the Romans, though no strangers, by that time, to the effects of barbarous rage, were astonished at the cruelty of their devastations. Thrace, Pannonia, and Illyricum were the countries which they first laid desolate. As they had at first no intention of settling in Europe, they made only inroads of short continuance into the empire; but these were frequent; and Procopius computes that in each of these, at a medium, two hundred thousand persons perished, or were carried off as slaves. Procop. Hist. Arcan. ap. Byz. Script. vol. i. 316. Thrace, the best-cultivated province in that quarter of the empire, was converted into a desert; and, when Priscus accompanied the ambassadors sent to Attila, there were no inhabitants in some of the cities, but a few miserable people, who had taken shelter among the ruins of the churches; and the fields were covered with the bones of those who had fallen by the sword. Priscus ap. Byz. Script. vol. i. p. 34. Attila became king of the Huns, A. D. 434. He is one of the greatest and most enterprising conquerors mentioned in history. He extended his empire over all the vast countries comprehended under the general names of Scythia and Germany in the ancient division of the world. While he was carrying on his wars against the barbarous nations, he kept the Roman empire under perpetual apprehensions, and extorted enormous subsidies from the timid and effeminate monarchs who governed it. In the year 451, he entered Gaul, at the head of an army composed of all the various nations which he had subdued. It was more numerous than any with which the barbarians had hitherto invaded the empire. The devastations which he committed were horrible; not only the open country, but the most flourishing cities, were desolated. The extent and cruelty of

his devastations are described by Salvianus de Gubernat. Dei, edit. Baluz. Par. 1669, p. 139, &c., and by Idatius, ubi supra, p. 1235. Ætius put a stop to his progress in that country by the famous battle of Chalons, in which (if we may believe the historians of that age), three hundred thousand persons perished. Idat. ibid. Jornandes de Rebus Geticis, ap. Grot. Hist. Gothor. p. 671. Amst. 1665. But the next year he resolved to attack the centre of the empire, and, marching into Italy, wasted it with rage, inflamed by the sense of his late disgrace. What Italy suffered by the Huns exceeded all the calamities which the preceding incursions of the barbarians had brought upon it. Conringius has collected several passages from the ancient historians, which prove that the devastations committed by the Vandals and Huns, in the countries situated on the banks of the Rhine, were no less cruel and fatal to the human race. Exercitatio de Urbibus Germaniæ, Opera, vol. i. p. 488. It is endless, it is shocking, to follow these destroyers of mankind through so many scenes of horror, and to contemplate the havoc which they made of the human species.

But the state in which Italy appears to have been, during several ages after the barbarous nations settled in it, is the most decisive proof of the cruelty as well as extent of their devastations. Whenever any country is thinly inhabited, trees and shrubs spring up in the uncultivated fields, and, spreading by degrees, form large forests; by the overflowing of rivers, and the stagnating of waters, other parts of it are converted into lakes and marshes. Ancient Italy, which the Romans rendered the seat of elegance and luxury, was cultivated to the highest pitch. But so effectually did the devastations of the barbarians destroy all the effects of Roman industry and cultivation, that in the eighth century a con-

siderable part of Italy appears to have been covered with forests and marshes of great extent. Muratori enters into a minute detail concerning the situation and limits of several of these; and proves, by the most authentic evidence, that great tracts of territory in all the different provinces of Italy were either overrun with wood or laid under water. Nor did these occupy parts of the country naturally barren or of little value, but were spread over districts which ancient writers represent as extremely fertile, and which at present are highly cultivated. Muratori, Antiquitates Italicæ Medii Ævi, dissert. xxi. v. ii. p. 149, 153, &c. A strong proof of this occurs in a description of the city of Modena, by an author of the tenth century. Murat. Script. Rerum Italic. vol. iii. pars ii. p. 691. The state of desolation in other countries of Europe seems to have been the same. In many of the most early charters now extant, the lands granted to monasteries, or to private persons, are distinguished into such as are cultivated or inhabited, and such as were *eremi*, desolate. In many instances, lands are granted to persons because they had taken them from the desert, *ab eremo*, and had cultivated and planted them with inhabitants. This appears from a charter of Charlemagne, published by Eckhart, de Rebus Franciæ Orientalis, vol. ii. p. 864, and from many charters of his successors quoted by Du Cange, voc. *Eremus*. — Wherever a right of property in land can be thus acquired, it is evident that the country must be extremely desolate, and thinly peopled. The first settlers in America obtained possession of land by such a title. Whoever was able to clear and to cultivate a field was recognized as the proprietor. His industry merited such a recompense. The grants in the charters which I have mentioned flow from a similar principle, and there must have been some resemblance in the state of the countries.

Muratori adds, that, during the eighth and ninth centuries, Italy was greatly infested by wolves and other wild beasts; another mark of its being destitute of inhabitants. Murat. Antiq. vol. ii. p. 163. Thus Italy, the pride of the ancient world for its fertility and cultivation, was reduced to the state of a country newly peopled and lately rendered habitable.

I am sensible, not only that some of these descriptions of the devastations, which I have quoted, may be exaggerated, but that the barbarous tribes, in making their settlements, did not proceed invariably in the same manner. Some of them seemed to be bent on exterminating the ancient inhabitants; others were more disposed to incorporate with them. It is not my province either to inquire into the causes which occasioned this variety in the conduct of the conquerors, or to describe the state of those countries where the ancient inhabitants were treated most mildly. The facts which I have produced are sufficient to justify the account which I have given in the text, and to prove, that the destruction of the human species, occasioned by the hostile invasions of the Northern nations, and their subsequent settlements, was much greater than many authors seem to imagine.

Note VI. — Sect. I. p. 14.

I have observed, Note II., that our only certain information concerning the ancient state of the barbarous nations must be derived from the Greek and Roman writers. Happily, an account of the institutions and customs of one people, to which those of all the rest seem to have been in a great measure similar, has been transmitted to us by two authors, the most capable, perhaps, that ever wrote, of observing them with profound discernment, and of describing them with propriety and

force. The reader must perceive that Cæsar and Tacitus are the authors whom I have in view. The former gives a short account of the ancient Germans in a few chapters of the sixth book of his Commentaries; the latter wrote a treatise expressly on that subject. These are the most precious and instructive monuments of antiquity to the present inhabitants of Europe. From them we learn,—

1. That the state of society among the ancient Germans was of the rudest and most simple form. They subsisted entirely by hunting or by pasturage. Cæs. lib. vi. c. 21. They neglected agriculture, and lived chiefly on milk, cheese, and flesh. Ibid. c. 22. Tacitus agrees with him in most of these points. De Morib. Germ. c. 14, 15, 23. The Goths were equally negligent of agriculture. Prisc. Rhet. ap. Byz. Script. v. i. p. 31, B. Society was in the same state among the Huns, who disdained to cultivate the earth, or to touch a plough. Amm. Marcel. lib. xxxi. p. 475. The same manners took place among the Alans. Ibid. p. 477. While society remains in this simple state, men by uniting together scarcely relinquish any portion of their natural independence. Accordingly we are informed, 2. That the authority of civil government was extremely limited among the Germans. During times of peace, they had no common or fixed magistrate, but the chief men of every district dispensed justice and accommodated differences. Cæs. ibid. c. 23. Their kings had not absolute or unbounded power; their authority consisted rather in the privilege of advising, than in the power of commanding. Matters of small consequence were determined by the chief men; affairs of importance by the whole community. Tacit. c. 7, 11. The Huns, in like manner, deliberated in common concerning every business of moment to the society; and were not subject to the rigor of regal authority Amm. Marcel. lib. xxxi. p. 474. 3. Every in-

dividual among the ancient Germans was left at liberty to choose whether he would take part in any military enterprise which was proposed; there seems to have been no obligation to engage in it imposed on him by public authority. "When any of the chief men proposes an expedition, such as approve of the cause and of the leader rise up, and declare their intention of following him; after coming under this engagement, those who do not fulfil it are considered as deserters and traitors, and are looked upon as infamous." Cæs. ibid. c. 23. Tacitus plainly points at the same custom, though in terms more obscure. Tacit. c. 11. 4. As every individual was so independent, and master in so great a degree of his own actions, it became, of consequence, the great object of every person among the Germans, who aimed at being a leader, to gain adherents, and attach them to his person and interest. These adherents Cæsar calls *ambacti* and *clientes*, i. e. retainers or clients; Tacitus, *comites*, or companions. The chief distinction and power of the leaders consisted in being attended by a numerous band of chosen youth. This was their pride as well as ornament during peace, and their defence in war. The leaders gained or preserved the favor of these retainers by presents of armor and of horses; or by the profuse, though inelegant, hospitality with which they entertained them. Tacit. c. 14, 15. 5. Another consequence of the personal liberty and independence which the Germans retained, even after they united in society, was their circumscribing the criminal jurisdiction of the magistrate within very narrow limits, and their not only claiming, but exercising, almost all the rights of private resentment and revenge. Their magistrates had not the power either of imprisoning or of inflicting any corporal punishment on a free man. Tacit. c. 7. Every person was obliged to avenge the wrongs which his parents or friends had sustained. Their enmi-

ties were hereditary, but not irreconcilable. Even murder was compensated by paying a certain number of cattle. Tacit. c. 21. A part of the fine went to the king, or state, a part to the person who had been injured, or to his kindred. Ibid. c. 12.

Those particulars concerning the institutions and manners of the Germans, though well known to every person conversant in ancient literature, I have thought proper to arrange in this order, and to lay before such of my readers as may be less acquainted with these facts, both because they confirm the account which I have given of the state of the barbarous nations, and because they tend to illustrate all the observations I shall have occasion to make concerning the various changes in their government and customs. The laws and customs introduced by the barbarous nations into their new settlements are the best commentary on the writings of Cæsar and Tacitus; and their observations are the best key to a perfect knowledge of these laws and customs.

One circumstance with respect to the testimonies of Cæsar and Tacitus concerning the Germans merits attention. Cæsar wrote his brief account of their manners more than a hundred years before Tacitus composed his Treatise de Moribus Germanorum. A hundred years make a considerable period in the progress of national manners, especially if, during that time, those people who are rude and unpolished have had much communication with more civilized states. This was the case with the Germans. Their intercourse with the Romans began when Cæsar crossed the Rhine, and increased greatly during the interval between that event and the time when Tacitus flourished. We may accordingly observe, that the manners of the Germans in his time, which Cæsar describes, were less improved than those of the same people as delineated by Tacitus. Besides this, it

is remarkable, that there was a considerable difference in the state of society among the different tribes of Germans. The Suiones were so much improved, that they began to be corrupted. Tacit. c. 44. The Fenni were so barbarous, that it is wonderful how they were able to subsist. Ibid. c. 46. Whoever undertakes to describe the manners of the Germans, or to found any political theory upon the state of society among them, ought carefully to attend to both these circumstances.

Before I quit this subject, it may not be improper to observe, that, though successive alterations in their institutions, together with the gradual progress of refinement, have made an entire change in the manners of the various people who conquered the Roman empire, there is still one race of men nearly in the same political situation with theirs, when they first settled in their new conquests; I mean the various tribes and nations of savages in North America. It cannot, then, be considered either as a digression, or as an improper indulgence of curiosity, to inquire whether this similarity in their political state has occasioned any resemblance between their character and manners. If the likeness turns out to be striking, it is a stronger proof that a just account has been given of the ancient inhabitants of Europe, than the testimony even of Cæsar or of Tacitus.

1. The Americans subsist chiefly by hunting and fishing. Some tribes neglect agriculture entirely. Among those who cultivate some small spot near their huts, that, together with all works of labor, is performed by the women. P. Charlevoix, Journal Historique d'un Voyage de l'Amérique, 4to, Par. 1744, p. 334. In such a state of society, the common wants of men being few, and their mutual dependence upon each other small, their union is extremely imperfect and feeble, and they continue to enjoy their natural liberty almost unimpaired. It is the

first idea of an American, that every man is born free and independent, and that no power on earth hath any right to diminish or circumscribe his natural liberty. There is hardly any appearance of subordination, either in civil or domestic government. Every one does what he pleases. A father and mother live with their children, like persons whom chance has brought together, and whom no common bond unites. Their manner of educating their children is suitable to this principle. They never chastise or punish them, even during their infancy. As they advance in years, they continue to be entirely masters of their own actions, and seem not to be conscious of being responsible for any part of their conduct. Ibid. pp. 272, 273. — 2. The power of their civil magistrates is extremely limited. Among most of their tribes, the sachem, or chief, is elective. A council of old men is chosen to assist him, without whose advice he determines no affair of importance. The sachems neither possess nor claim any great degree of authority. They propose and entreat, rather than command. The obedience of their people is altogether voluntary. Ibid. pp. 266, 268. — 3. The savages of America engage in their military enterprises, not from constraint, but choice. When war is resolved, a chief arises, and offers himself to be the leader. Such as are willing (for they compel no person) stand up one after another, and sing their war-song. But if, after this, any of these should refuse to follow the leader to whom they have engaged, his life would be in danger, and he would be considered as the most infamous of men. Ibid. pp. 217, 218. — 4. Such as engage to follow any leader, expect to be treated by him with great attention and respect; and he is obliged to make them presents of considerable value. Ibid. p. 218. — 5. Among the Americans, the magistrate has scarcely any criminal jurisdiction. Ibid. p. 272. Upon receiving any injury,

the person or family offended may inflict what punishment they please on the person who was the author of it. Ibid. p. 274. Their resentment and desire of vengeance are excessive and implacable. Time can neither extinguish nor abate it. It is the chief inheritance parents leave to their children; it is transmitted from generation to generation, until an occasion be found of satisfying it. Ibid. p. 309. Sometimes, however, the offended party is appeased. A compensation is paid for a murder that has been committed. The relations of the deceased receive it; and it consists most commonly of a captive taken in war, who, being substituted in place of the person who was murdered, assumes his name and is adopted into his family. Ibid. p. 274. The resemblance holds in many other particulars. It is sufficient for my purpose to have pointed out the similarity of those great features which distinguish and characterize both people. Bochart, and other philologists of the last century, who, with more erudition than science, endeavored to trace the migrations of various nations, and who were apt, upon the slightest appearance of resemblance, to find an affinity between nations far removed from each other, and to conclude that they were descended from the same ancestors, would hardly have failed, on viewing such an amazing similarity, to pronounce with confidence, "that the Germans and Americans must be the same people." But a philosopher will satisfy himself with observing, "that the characters of nations depend on the state of society in which they live, and on the political institutions established among them; and that the human mind, whenever it is placed in the same situation, will, in ages the most distant and in countries the most remote, assume the same form, and be distinguished by the same manners."

I have pushed the comparison between the Germans and Americans no further than was necessary for the il-

lustration of my subject. I do not pretend that the state of society in the two countries was perfectly similar in every respect. Many of the German tribes were more civilized than the Americans. Some of them were not unacquainted with agriculture; almost all of them had flocks of tame cattle, and depended upon them for the chief part of their subsistence. Most of the American tribes subsist by hunting, and are in a ruder and more simple state than the ancient Germans. The resemblance, however, between their condition is greater, perhaps, than any that history affords an opportunity of observing between any two races of uncivilized people, and this has produced a surprising similarity of manners.

Note VII. — Sect. I. p. 14.

The booty gained by an army belonged to the army. The king himself had no part of it but what he acquired by lot. A remarkable instance of this occurs in the history of the Franks. The army of Clovis, the founder of the French monarchy, having plundered a church, carried off, among other sacred utensils, a vase of extraordinary size and beauty. The bishop sent deputies to Clovis, beseeching him to restore the vase, that it might be again employed in the sacred services to which it had been consecrated. Clovis desired the deputies to follow him to Soissons, as the booty was to be divided in that place, and promised, that, if the lot should give him the disposal of the vase, he would grant what the bishop desired. When he came to Soissons, and all the booty was placed in one great heap in the middle of the army, Clovis entreated, that, before making the division, they would give him that vase over and above his share. All appeared willing to gratify the king, and to comply with his request, when a fierce and haughty soldier lifted up his

battle-axe, and, striking the vase with the utmost violence, cried out with a loud voice, "You shall receive nothing here but that to which the lot gives you a right." Gregor. Turon. Histor. Francorum, lib. ii. c. 27, p. 70, .Par. 1610.

Note VIII. — Sect. I. p. 17.

The history of the establishment and progress of the feudal system is an interesting object to all the nations of Europe. In some countries their jurisprudence and laws are still in a great measure feudal. In others, many forms and practices established by custom, or founded on statutes, took their rise from the feudal law, and cannot be understood without attending to the ideas peculiar to it. Several authors of the highest reputation for genius and erudition, have endeavored to illustrate this subject, but still many parts of it are obscure. I shall endeavor to trace, with precision, the progress and variation of ideas concerning property in land among the barbarous nations; and shall attempt to point out the causes which introduced these changes, as well as the effects which followed upon them. Property in land seems to have gone through four successive changes among the people who settled in the various provinces of the Roman empire.

I. While the barbarous nations remained in their original countries, their property in land was only temporary, and they had no certain limits to their possessions. After feeding their flocks in one district, they removed with them, and with their wives and families, to another; and abandoned that likewise in a short time. They were not, in consequence of this imperfect species of property, brought under any positive or formal obligation to serve the community; all their services were purely voluntary. Every individual was at liberty to choose how far he

would contribute towards carrying on any military enterprise. If he followed a leader in any expedition, it was from attachment, not from a sense of obligation. The clearest proof of this has been produced in Note VI. While property continued in this state, we can discover nothing that bears any resemblance to a feudal tenure, or to the subordination and military service which the feudal system introduced.

II. Upon settling in the countries which they had subdued, the victorious troops divided the conquered lands. Whatever portion of them fell to a soldier, he seized as the recompense due to his valor, as a settlement acquired by his own sword. He took possession of it as a freeman in full property. He enjoyed it during his own life, and could dispose of it at pleasure, or transmit it as an inheritance to his children. Thus property in land became fixed. It was at the same time *allodial*, i. e. the possessor had the entire right of property and dominion; he held of no sovereign or superior lord, to whom he was bound to do homage and perform service. But as these new proprietors were in some danger (as has been observed in the text) of being disturbed by the remainder of the ancient inhabitants, and in still greater danger of being attacked by successive colonies of barbarians as fierce and rapacious as themselves, they saw the necessity of coming under obligations to defend the community more explicit than those to which they had been subject in their original habitations. On this account, immediately upon their fixing in their new settlements, every freeman became bound to take arms in defence of the community, and, if he refused or neglected so to do, was liable to a considerable penalty. I do not mean that any contract of this kind was formally concluded, or mutually ratified by any legal solemnity. It was established by tacit consent, like the other compacts which hold society together.

The mutual security and preservation made it the interest of all to recognize its authority, and to enforce the observation of it. We can trace back this new obligation on the proprietors of land to a very early period in the history of the Franks. Chilperic, who began his reign A. D. 562, exacted a fine, *bannos jussit exigi*, from certain persons who had refused to accompany him in an expedition. Gregor. Turon. lib. v. c. 26, p. 211. Childebert, who began his reign A. D. 576, proceeded in the same manner against others who had been guilty of a like crime. Ibid. lib. vii. c. 42, p. 342. Such a fine could not have been exacted while property continued in its first state, and military service was entirely voluntary. Charlemagne ordained, that every freeman who possessed five mansi, i. e. sixty acres of land, *in property*, should march in person against the enemy. Capitul. A. D. 807. Louis le Débonnaire, A. D. 815, granted lands to certain Spaniards who fled from the Saracens, and allowed them to settle in his territories, on condition that they should serve in the army *like other freemen*. Capitul. vol. i. p. 500. By land possessed *in property*, which is mentioned in the law of Charlemagne, we are to understand, according to the style of that age, allodial land; *alodes* and *proprietas*, *alodum* and *proprium*, being words perfectly synonymous. Du Cange, voce *Alodis*. The clearest proof of the distinction between allodial and beneficiary possession is contained in two charters published by Muratori, by which it appears, that a person might possess one part of his estate as allodial, which he could dispose of at pleasure, the other as a *beneficium*, of which he had only the usufruct, the property returning to the superior lord on his demise. Antiq. Ital. Medii Ævi, vol. i. pp. 559, 565. The same distinction is pointed out in a capitulare of Charlemagne, A. D. 812, edit. Baluz. vol i. p. 491. Count Everard, who married a daughter of

Louis le Débonnaire, in the curious testament by which he disposes of his vast estate among his children, distinguishes between what he possessed *proprietate*, and what he held *beneficio;* and it appears that the greater part was allodial, A. D. 837. Aub. Miræi Opera Diplomatica, Lovan. 1723, vol. i. p. 19.

In the same manner *liber homo* is commonly opposed to *vassus* or *vassallus;* the former denotes an allodial proprietor, the latter one who held of a superior. These *free* men were under an obligation to serve the state; and this duty was considered as so sacred, that freemen were prohibited from entering into holy orders, unless they had obtained the consent of the sovereign. The reason given for this in the statute is remarkable: "For we are informed that some do so, not so much out of devotion, as in order to avoid that military service which they are bound to perform." Capitul. lib. i. § 114. If, upon being summoned into the field, any freeman refused to obey, a full *herebannum*, i. e. a fine of sixty crowns, was to be exacted from him according to the law of the Franks. Capit. Car. Magn. ap. Leg. Longob. lib. i. tit. 14, § 13, p. 539. This expression, according to the law of the Franks, seems to imply, that both the obligation to serve, and the penalty on those who disregarded it, were coeval with the laws made by the Franks at their first settlement in Gaul. This fine was levied with such rigor, "that, if any person convicted of this crime was insolvent, he was reduced to servitude, and continued in that state until such time as his labor should amount to the value of the *herebannum*." Ibid. The Emperor Lotharius rendered the penalty still more severe; and if any person, possessing such an extent of property as made it incumbent on him to take the field in person, refused to obey the summons, all his goods were declared to be forfeited, and he himself might be punished with banishment. Murat. Script. Ital. vol. i. pars ii. p. 153.

III. Property in land having thus become fixed, and subject to military service, another change was introduced, though slowly, and step by step. We learn from Tacitus, that the chief men among the Germans endeavored to attach to their persons and interests certain adherents whom he calls *comites*. These fought under their standard, and followed them in all their enterprises. The same custom continued among them in their new settlements, and those attached or devoted followers were called *fideles*, *antrustiones*, *homines in truste dominica*, *leudes*. Tacitus informs us, that the rank of a comes was deemed honorable. De Morib. Germ. c. 13. The composition, which is the standard by which we must judge of the rank and condition of persons in the Middle Ages, paid for the murder of one *in truste dominica*, was triple to that paid for the murder of a freeman. Leg. Salicor. tit. 44, § 1 et 2. While the Germans remained in their own country, they courted the favor of these comites by presents of arms and horses, and by hospitality. See Note VI. As long as they had no fixed property in land, these were the only gifts that they could bestow, and the only reward which their followers desired. But upon their settling in the countries which they conquered, and when the value of property came to be understood among them, instead of those slight presents, the kings and chieftains bestowed a more substantial recompense in land on their adherents. These grants were called *beneficia*, because they were gratuitous donations; and *honores*, because they were regarded as marks of distinction. What were the services originally exacted in return for these *beneficia* cannot be determined with absolute precision; because there are no records so ancient. When allodial possessions were first rendered feudal, they were not, at once, subjected to all the feudal services. The transition here, as in all other changes of

importance, was gradual. As the great object of a feudal vassal was to obtain protection, when allodial proprietors first consented to become vassals of any powerful leader, they continued to retain as much of their ancient independence as was consistent with that new relation. The homage which they did to their superior, of whom they chose to hold, was called *homagium planum*, and bound them to nothing more than fidelity, but without any obligation either of military service, or attendance in the courts of their superior. Of this *homagium planum* some traces, though obscure, may still be discovered. Brussel, tom. i. p. 97. Among the ancient writs published by D. D. De Vic and Vaisette, Hist. de Langued., are a great many which they call *homagia*. They seem to be an intermediate step between the *homagium planum* mentioned by Brussel, and the engagement to perform complete feudal service. The one party promises protection, and grants certain castles or lands; the other engages to defend the person of the grantor, and to assist him likewise in defending his property as often as he shall be summoned to do so. But these engagements are accompanied with none of the feudal formalities, and no mention is made of any of the other feudal services. They appear rather to be a mutual contract between equals, than the engagement of a vassal to perform services to a superior lord. Preuves de l'Hist. de Lang., tom. ii. 173, et passim. As soon as men were accustomed to these, the other feudal services were gradually introduced. M. de Montesquieu considers these *beneficia* as fiefs, which originally subjected those who held them to military service. L'Esprit des Loix, l. xxx. c. 3 et 16. M. l'Abbé de Mably contends, that such as held these were at first subjected to no other service than what was incumbent on every freeman. Observations sur l'Histoire de France, i. 356. But upon comparing

their proofs and reasonings and conjectures, it seems to be evident, that as every freeman, in consequence of his allodial property, was bound to serve the community under a severe penalty, no good reason can be assigned for conferring these *beneficia*, if they did not subject such as received them to some new obligation. Why should a king have stripped himself of his domain, if he had not expected that, by parcelling it out, he might acquire a right to services to which he had formerly no title? We may then warrantably conclude, "That as allodial property subjected those who possessed it to serve the community, so *beneficia* subjected such as held them to personal service and fidelity to him from whom they received these lands." These *beneficia* were granted originally only during pleasure. No circumstance relating to the customs of the Middle Ages is better ascertained than this; and innumerable proofs of it might be added to those produced in L'Esprit des Loix, l. xxx. c. 16, and by Du Cange, vocc. *Beneficium et Feudum.*

IV. But the possession of benefices did not continue long in this state. A precarious tenure during pleasure was not sufficient to satisfy such as held lands, and by various means they gradually obtained a confirmation of their benefices during life. Feudor. lib. i. tit. i. Du Cange produces several quotations from ancient charters and chronicles in proof of this. Gloss. voc. *Beneficium.* After this it was easy to obtain or extort charters rendering *beneficia* hereditary, first in the direct line, then in the collateral, and at last in the female line. Leg. Longob. lib. iii. tit. 8. Du Cange, voc. *Beneficium.*

It is no easy matter to fix the precise time when each of these changes took place. M. l'Abbé Mably conjectures, with some probability, that Charles Martel first introduced the practice of granting *beneficia* for life. Observat. tom. i. pp. 103, 160. And that Louis le Débon-

naire was among the first who rendered them hereditary, is evident from the authorities to which he refers. Ibid. 429. Mabillon, however, has published a placitum of Louis le Débonnaire, A.D. 860, by which it appears, that he still continued to grant some *beneficia* only during life. De Re Diplomatica, lib. vi. p. 353. In the year 889, Odo, king of France, granted lands to "Ricabodo, fideli suo, jure beneficiario et fructuario," during his own life; and if he should die, and a son were born to him, that right was to continue during the life of his son. Mabillon, ut supra, p. 556. This was an intermediate step between fiefs merely during life, and fiefs hereditary to perpetuity. While *beneficia* continued under their first form, and were held only during pleasure, he who granted them not only exercised the *dominium*, or prerogative of superior lord, but he retained the property, giving his vassal only the *usufruct*. But under the latter form, when they became hereditary, although feudal lawyers continued to define a *beneficium* agreeably to its original nature, the property was in effect taken out of the hands of the superior lords, and lodged in those of the vassal. As soon as the reciprocal advantages of the feudal mode of tenure came to be understood by superiors as well as vassals, that species of holding became so agreeable to both, that not only lands, but casual rents, such as the profits of a toll, the fare paid at ferries, &c., the salaries or perquisites of offices, and even pensions themselves, were granted and held as fiefs; and military service was promised and exacted on account of these. Morice, Mém. pour servir de Preuves à l'Hist. de Bretagne, tom. ii. 78, 690. Brussel, tom. i. p. 41. How absurd soever it may seem to grant or to hold such precarious and casual property as a fief, there are instances of feudal tenures still more singular. The profits arising from the masses said at an altar were properly an ecclesiastical

revenue, belonging to the clergy of the church or monastery which performed that duty; but these were sometimes seized by the powerful barons. In order to ascertain their right to them, they held them as fiefs of the Church, and parcelled them out in the same manner as other property to their sub-vassals. Bouquet, Recueil des Hist. vol. x. 238, 480. The same spirit of encroachment which rendered fiefs hereditary, led the nobles to extort from their sovereigns hereditary grants of offices. Many of the great offices of the crown became hereditary in most of the kingdoms in Europe; and so conscious were monarchs of this spirit of usurpation among the nobility, and so solicitous to guard against it, that, on some occasions, they obliged the persons whom they promoted to any office of dignity to grant an obligation, that neither they nor their heirs should claim it as belonging to them by hereditary right. A remarkable instance of this is produced, Mém. de l'Acad. des Inscrip. tom. xxx. p. 595. Another occurs in the Thesaur. Anecdot. published by Martene et Durand, vol. i. p. 873. — This revolution in property occasioned a change corresponding to it in political government; the great vassals of the crown, as they acquired such extensive possessions, usurped a proportional degree of power, depressed the jurisdiction of the crown, and trampled on the privileges of the people. It is on account of this connection that it becomes an object of importance in history to trace the progress of feudal property; for, upon discovering in what state property was at any particular period, we may determine with precision what was the degree of power possessed by the king or by the nobility at that juncture.

One circumstance more, with respect to the changes which property underwent, deserves attention. I have shown, that, when the various tribes of barbarians divided

their conquests in the fifth and sixth centuries, the property which they acquired was allodial; but in several parts of Europe, property had become almost entirely feudal by the beginning of the tenth century. The former species of property seems to be so much better and more desirable than the latter, that such a change appears surprising, especially when we are informed that allodial property was frequently converted into feudal by a voluntary deed of the possessor. The motives which determined them to a choice so repugnant to the ideas of modern times concerning property, have been investigated and explained by M. de Montesquieu, with his usual discernment and accuracy, lib. xxxi. c. 8. The most considerable is that of which we have a hint in Lambertus Ardensis, an ancient writer quoted by Du Cange, voce *Alodis*. In those times of anarchy and disorder which became general in Europe after the death of Charlemagne, when there was scarcely any union among the different members of the community, and individuals were exposed, single and undefended by government, to rapine and oppression, it became necessary for every man to have a powerful protector, under whose banner he might range himself, and obtain security against enemies whom singly he could not oppose. For this reason he relinquished his allodial independence, and subjected himself to the feudal services, that he might find safety under the patronage of some respectable superior. In some parts of Europe, this change from allodial to feudal property became so general, that he who possessed land had no longer any liberty of choice left. He was obliged to recognize some liege-lord, and to hold of him. Thus Beaumanoir informs us, that in the counties of Clermont and Beauvois, if the lord or count discovered any lands within his jurisdiction for which no service was performed, and which paid to him no taxes or customs, he might instantly seize

it as his own; for, says he, according to our custom, no man can hold allodial property. Coust. chap. 24, p. 123. Upon the same principle is founded a maxim, which has at length become general in the law of France, *Nulle terre sans seigneur.* In other provinces of France, allodial property seems to have remained longer unalienated, and to have been more highly valued. A great number of charters, containing grants, or sales, or exchanges of allodial lands in the province of Languedoc, are published Hist. Génér. de Langued. par D. D. de Vic. et Vaisette, tom. ii. During the ninth, tenth, and great part of the eleventh century, the property in that province seems to have been entirely allodial; and scarcely any mention of feudal tenures occurs in the deeds of that country. The state of property, during these centuries, seems to have been perfectly similar in Catalonia and the country of Rousillon, as appears from the original charters published in the Appendix to Petr. de la Marca's treatise de Marca sive Limite Hispanico. Allodial property seems to have continued in the Low Countries to a period still later. During the eleventh, twelfth, and thirteenth centuries, this species of property appears to have been of considerable extent. Miræi Opera Diplom. vol. i. 34, 74, 75, 83, 817, 296, 842, 847, 578. Some vestiges of allodial property appear there as late as the fourteenth century. Ibid. 218. Several facts which prove that allodial property subsisted in different parts of Europe long after the introduction of feudal tenures, and which tend to illustrate the distinction between these two different species of possession, are produced by M. Houard, Anciennes Loix des François, conservées dans les Coutumes Angloises, vol. i p. 192, &c. The notions of men with respect to property vary according to the diversity of their understandings, and the caprice of their passions. At the same time that some persons were fond of relinquishing allodial property,

in order to hold it by feudal tenure, others seem to have been solicitous to convert their fiefs into allodial property. An instance of this occurs in a charter of Louis le Débonnaire, published by Eckhard, Commentarii de Rebus Franciæ Orientalis, vol. ii. p. 885. Another occurs in the year 1299, Reliquiæ MSS. omnis Ævi, by Ludwig, vol. i. p. 209; and even one as late as the year 1337, ibid. vol. vii. p. 40. The same thing took place in the Low Countries. Miræi Oper. i. 52.

In tracing these various revolutions of property, I have hitherto chiefly confined myself to what happened in France, because the ancient monuments of that nation have either been more carefully preserved, or have been more clearly illustrated, than those of any people in Europe.

In Italy, the same revolutions happened in property, and succeeded each other in the same order. There is some ground, however, for conjecturing, that allodial property continued longer in estimation among the Italians than among the French. It appears that many of the charters granted by the emperors in the ninth century conveyed an allodial right to land. Murat. Antiq. Med. Ævi, vol. i. p. 575, &c. But in the eleventh century, we find some examples of persons who resigned their allodial property, and received it back as a feudal tenure. Ibid. p. 610, &c. Muratori observes, that the word *feudum*, which came to be substituted in place of *beneficium*, does not occur in any authentic charter previous to the eleventh century. Ibid. 594. A charter of King Robert of France, A. D. 1008, is the earliest deed in which I have met with the word *feudum*. Bouquet, Recueil des Historiens des Gaules et de la France, tom. x. p. 593, b. This word occurs, indeed, in an edict, A. D. 790, published by Brussel, vol. i. p. 77. But the authenticity of that deed has been called in question, and perhaps the fre-

quent use of the word *feudum* in it is an additional reason for doing so. The account which I have given of the nature both of allodial and feudal possessions receives some confirmation from the etymology of the words themselves. *Alode* or *allodium* is compounded of the German particle *an* and *lot*, i. e. land obtained by lot. Wachteri Glossar. Germanicum, voc. *Allodium*, p. 35. It appears from the authorities produced by him, and by Du Cange, voc. *Sors*, that the Northern nations divided the lands which they had conquered in this manner. *Feodum* is compounded of *od*, possession or estate, and *feo*, wages, pay; intimating that it was stipendiary, and granted as a recompense for service. Wachterus, ibid. voc. *Feodum*, p. 441.

The progress of the feudal system among the Germans was perfectly similar to that which we have traced in France. But as the emperors of Germany, especially after the imperial crown passed from the descendants of Charlemagne to the house of Saxony, were far superior to the contemporary monarchs of France in abilities, the imperial vassals did not aspire so early to independence, nor did they so soon obtain the privilege of possessing their benefices by hereditary right. According to the compilers of the Libri Feudorum, Conrad II. or the Salic, was the first emperor who rendered fiefs hereditary. Lib. i. tit. i. Conrad began his reign A. D. 1024. Ludovicus Pius, under whose reign grants of hereditary fiefs were frequent in France, succeeded his father A. D. 814. Not only was this innovation so much later in being introduced among the vassals of the German emperors, but even after Conrad had established it, the law continued favorable to the ancient practice; and unless the charter of the vassal bore expressly that the fief descended to his heirs, it was presumed to be granted only during life. Lib. Feud. ibid. Even after the alteration made

by Conrad, it was not uncommon in Germany to grant fiefs only for life. A charter of this kind occurs as late as the year 1376. Charta ap. Boehmer. Princip. Jur. Feud. p. 361. The transmission of fiefs to collateral and female heirs took place very slowly among the Germans. There is extant a charter, A. D. 1201, conveying the right of succession to females; but it is granted as an extraordinary mark of favor, and in reward of uncommon services. Boehmer. ibid. p. 365. In Germany, as well as in France and Italy, a considerable part of the lands continued to be allodial long after the feudal mode of tenure was introduced. It appears from the Codex Diplomaticus Monasterii Buch, that a great part of the lands in the marquisate of Misnia was still allodial as late as the thirteenth century. No. 31, 36, 37, 46, &c. ap. Scriptores Hist. German. cura Schoetgenii et Kreysigii, Altenb. 1755, vol. ii. 183, &c. Allodial property seems to have been common in another district of the same province, during the same period. Reliquiæ Diplomaticæ Sanctimonial. Beutiz. No. 17, 36, 58, ibid. 374, &c.

NOTE IX. — Sect. I. p. 19.

As I shall have occasion, in another note, to represent the condition of that part of the people who dwelt in cities, I will confine myself in this to consider the state of the inhabitants of the country. The persons employed in cultivating the ground during the ages under review may be divided into three classes: — I. *Servi*, or slaves. This seems to have been the most numerous class, and consisted either of captives taken in war, or of persons, the property in whom was acquired in some one of the various methods enumerated by Du Cange, voc. *Servus*, vol. vi. p. 447. The wretched condition of

this numerous race of men will appear from several circumstances. 1. Their masters had absolute dominion over their persons. They had the power of punishing their slaves capitally, without the intervention of any judge. This dangerous right they possessed, not only in the more early periods when their manners were fierce, but it continued as late as the twelfth century. Joach. Potgiesserus de Statu Servorum, Lemgov. 1736, 4to, lib. ii. cap. 1, § 4, 10, 13, 24. Even after this jurisdiction of masters came to be restrained, the life of a slave was deemed to be of so little value, that a very slight compensation atoned for taking it away. Idem, lib. iii. c. 6. If masters had power over the lives of their slaves, it is evident that almost no bounds would be set to the rigor of the punishments which they might inflict upon them. The codes of ancient laws prescribed punishments for the crimes of slaves different from those which were inflicted on freemen. The latter paid only a fine or compensation; the former were subjected to corporal punishments. The cruelty of these was, in many instances, excessive. Slaves might be put to the rack on very slight occasions. The laws, with respect to these points, are to be found in Potgiesserus, lib. iii. c. 7, § 2, and are shocking to humanity. 2. If the dominion of masters over the lives and persons of their slaves was thus extensive, it was no less so over their actions and property. They were not originally permitted to marry. Male and female slaves were allowed, and even encouraged, to cohabit together. But this union was not considered as a marriage: it was called *contubernium*, not *nuptiæ* or *matrimonium*. Potgiess. lib. ii. c. 2, § 1. This notion was so much established, that, during several centuries after the barbarous nations embraced the Christian religion, slaves, who lived as husband and wife, were not joined together by any religious

ceremony, and did not receive the nuptial benediction from a priest. Ibid. § 10, 11. When this conjunction between slaves came to be considered as a lawful marriage, they were not permitted to marry without the consent of their master, and such as ventured to do so without obtaining that, were punished with great severity, and sometimes were put to death. Potgiess. Ibid. § 12, &c. Gregor. Turon. Hist. lib. v. c. 3. When the manners of the European nations became more gentle, and their ideas more liberal, slaves who married without their master's consent were subjected only to a fine. Potgiess. Ibid. § 20. Du Cange, Gloss. voc. *Forismaritagium*. 3. All the children of slaves were in the same condition with their parents, and became the property of the master. Du Cange, Gloss. voc. *Servus*, vol. vi. p. 450. Murat. Antiq. Ital. vol. i. p. 766. 4. Slaves were so entirely the property of their masters, that they could sell them at pleasure. While domestic slavery continued, property in a slave was sold in the same manner with that which a person had in any other movable. Afterwards slaves became *adscripti glebæ*, and were conveyed by sale, together with the farm or estate to which they belonged. Potgiesserus has collected the laws and charters which illustrate this well-known circumstance in the condition of slaves. Lib. ii. c. 4. 5. Slaves had a title to nothing but subsistence and clothes from their master; all the profits of their labor accrued to him. If a master, from indulgence, gave his slaves any *peculium*, or fixed allowance for their subsistence, they had no right of property in what they saved out of that. All that they accumulated belonged to their master. Potgiess. lib. ii. c. 10. Murat. Antiq. Ital. vol. i. p. 768. Du Cange, voc. *Servus*, vol. vi. p. 451. Conformably to the same principle, all the effects of slaves belonged to their masters at their

death, and they could not dispose of them by testament. Potgiess. lib. ii: c. 11. 6. Slaves were distinguished from freemen by a peculiar dress. Among all the barbarous nations, long hair was a mark of dignity and of freedom; slaves were, for that reason, obliged to shave their heads; and by this distinction, how indifferent soever it may be in its own nature, they were reminded every moment of the inferiority of their condition. Potgiess. lib. iii. c. 4. For the same reason, it was enacted in the laws of almost all the nations of Europe, that no slave should be admitted to give evidence against a freeman in a court of justice. Du Cange, voc. *Servus*, vol. vi. p. 451. Potgiess. lib. iii. c. 3.

II. *Villani.* They were likewise *adscripti glebæ* or *villæ*, from which they derived their name, and were transferable along with it. Du Cange, voc. *Villanus.* But in this they differed from slaves, that they paid a fixed rent to their master for the land which they cultivated, and, after paying that, all the fruits of their labor and industry belonged to themselves in property. This distinction is marked by Pierre de Fontain's Conseil. Vie de St. Louis par Joinville, p. 119, édit. de Du Cange. Several cases, decided agreeably to this principle, are mentioned by Murat. Ibid. p. 773.

III. The last class of persons employed in agriculture were freemen. These are distinguished by various names among the writers of the Middle Ages, *arimanni*, *conditionales*, *originarii*, *tributales*, &c. These seem to have been persons who possessed some small allodial property of their own, and, besides that, cultivated some farm belonging to their more wealthy neighbors, for which they paid a fixed rent; and bound themselves likewise to perform several small services *in prato vel in messe*, *in aratura vel in vinea*, such as ploughing a certain quantity of their landlord's ground, assisting him in harvest and vint-

age work, &c. The clearest proof of this may be found in Muratori, vol. i. p. 712, and in Du Cange, under the respective words above mentioned. I have not been able to discover whether these *arimanni*, &c. were removable at pleasure, or held their farms by lease for a certain number of years. The former, if we may judge from the genius and maxims of the age, seems to be most probable. These persons, however, were considered as freemen in the most honorable sense of the word; they enjoyed all the privileges of that condition, and were even called to serve in war; an honor to which no slave was admitted. Murat. Antiq. vol. i. p. 743, vol. ii. p. 446. This account of the condition of these three different classes of persons will enable the reader to apprehend the full force of an argument which I shall produce in confirmation of what I have said in the text concerning the wretched state of the people during the Middle Ages. Notwithstanding the immense difference between the first of these classes and the third, such was the spirit of tyranny which prevailed among the great proprietors of lands, and so various their opportunities of oppressing those who were settled on their estates, and of rendering their condition intolerable, that many freemen, in despair, renounced their liberty, and voluntarily surrendered themselves as slaves to their powerful masters. This they did, in order that their masters might become more immediately interested to afford them protection, together with the means of subsisting themselves and their families. The forms of such a surrender, or *obnoxiatio*, as it was then called, are preserved by Marculfus, lib. ii. c. 28; and by the anonymous author, published by M. Bignon, together with the collection of *formulæ* compiled by Marculfus, c. 16. In both, the reason given for the *obnoxiatio* is the wretched and indigent condition of the person who gives up his liberty. It was still more common for

freemen to surrender their liberty to bishops or abbots, that they might partake of the security which the vassals and slaves of churches and monasteries enjoyed, in consequence of the superstitious veneration paid to the saint under whose immediate protection they were supposed to be taken. Du Cange, voc. *Oblatus*, vol. iv. p. 1286. That condition must have been miserable indeed which could induce a freeman voluntarily to renounce his liberty, and to give up himself as a slave to the disposal of another. The number of slaves in every nation of Europe was immense. The greater part of the inferior class of people in France were reduced to this state at the commencement of the third race of kings. L'Esprit des Loix, liv. xxx. c. 11. The same was the case in England. Brady, Pref. to Gen. Hist. — Many curious facts, with respect to the ancient state of *villains* or slaves in England, are published in Observations on the Statutes, chiefly the more ancient, 3d edit. p. 269, &c.

Note X. — Sect. I. p. 21.

Innumerable proofs of this might be produced. Many charters, granted by persons of the highest rank, are preserved, from which it appears that they could not subscribe their name. It was usual for persons who could not write to make the sign of the cross in confirmation of a charter. Several of these remain, where kings and persons of great eminence affix *signum crucis manu propria pro ignoratione literarum.* Du Cange, voc. *Crux*, vol. iii. p. 1191. From this is derived the phrase of signing instead of subscribing a paper. In the ninth century, Herbaud, Comes Palatii, though supreme judge of the empire by virtue of his office, could not subscribe his name. Nouveau Traité de Diplomatique par deux Bénédictins, 4to, tom. ii. p. 422. As late as the four-

teenth century, Du Guesclin, constable of France, the greatest man in the state, and one of the greatest men of his age, could neither read nor write. St. Palaye, Mémoires sur l'ancienne Chevalerie, tit. ii. p. 82. Nor was this ignorance confined to laymen; the greater part of the clergy was not many degrees superior to them in science. Many dignified ecclesiastics could not subscribe the canons of those councils in which they sat as members. Nouv. Traité de Diplom. tom. ii. p. 424. One of the questions appointed by the canons to be put to persons who were candidates for orders was this: "Whether they could read the gospels and epistles, and explain the sense of them, at least literally?" Regino Prumiensis, ap. Bruck. Hist. Philos. v. iii. p. 631. Alfred the Great complained, that from the Humber to the Thames there was not a priest who understood the liturgy in his mother-tongue, or who could translate the easiest piece of Latin; and that from the Thames to the sea, the ecclesiastics were still more ignorant. Asserus de Rebus Gestis Alfredi, ap. Camdeni Anglica, &c. p. 25. The ignorance of the clergy is quaintly described by the author of the Dark Ages: "Potius dediti gulæ quam glossæ; potius colligunt libras quam legunt libros; libentiùs intuentur Martham quam Marcum; malunt legere in Salmone quam in Solomone." Alanus de Art. Predicat. ap. Lebeuf, Dissert. tom. ii. p. 21. To the obvious causes of such universal ignorance, arising from the state of government and manners, from the seventh to the eleventh century, we may add the scarcity of books during that period, and the difficulty of rendering them more common. The Romans wrote their books either on parchment or on paper made of the Egyptian papyrus. The latter, being the cheapest, was of course the most commonly used. But after the Saracens conquered Egypt, in the seventh century, the communi-

cation between that country and the people settled in Italy, or in other parts of Europe, was almost entirely broken off, and the papyrus was no longer in use among them. They were obliged, on that account, to write all their books upon parchment, and, as the price of that was high, books became extremely rare, and of great value. We may judge of the scarcity of the materials for writing them from one circumstance. There still remain several manuscripts of the eighth, ninth, and following centuries, written on parchment, from which some former writing had been erased, in order to substitute a new composition in its place. In this manner it is probable that several works of the ancients perished. A book of Livy or of Tacitus might be erased, to make room for the legendary tale of a saint, or the superstitious prayers of a missal. Murat. Antiq. Ital. vol. iii. p. 833. P. de Montfaucon affirms, that the greater part of the manuscripts on parchment which he has seen, those of an ancient date excepted, are written on parchment from which some former treatise had been erased. Mém. de l'Acad. des Inscript. tom. ix. p. 325. As the want of materials for writing is one reason why so many of the works of the ancients have perished, it accounts likewise for the small number of manuscripts of any kind previous to the eleventh century, when they began to multiply, from a cause which shall be mentioned. Hist. Littér. de France, tom. vi. p. 6. Many circumstances prove the scarcity of books during these ages. Private persons seldom possessed any books whatever. Even monasteries of considerable note had only one missal. Murat. Antiq. vol. ix. p. 789. Lupus, abbot of Ferrières, in a letter to the pope, A. D. 855, beseeches him to lend him a copy of Cicero de Oratore and Quintilian's Institutions; "for," says he, "although we have parts of those books, there is no complete copy of them

in all France." Murat. Ant. vol. iii. p. 835. The price of books became so high, that persons of a moderate fortune could not afford to purchase them. The countess of Anjou paid for a copy of the Homilies of Haimon, bishop of Halberstadt, two hundred sheep, five quarters of wheat, and the same quantity of rye and millet. Histoire Littéraire de France, par des Religieux Bénédictins, tom. vii. p. 3. Even so late as the year 1471, when Louis XI. borrowed the works of Rasis, the Arabian physician, from the faculty of medicine in Paris, he not only deposited in pledge a considerable quantity of plate, but was obliged to procure a nobleman to join with him as surety in a deed, binding himself, under a great forfeiture, to restore it. Gabr. Naudé Addit. à l'Histoire de Louys XI. par Comines, édit. de Fresnoy, tom. iv. p. 281. Many curious circumstances, with respect to the extravagant price of books in the Middle Ages, are collected by that industrious compiler, to whom I refer such of my readers as deem this small branch of literary history an object of curiosity. When any person made a present of a book to a church or monastery, in which were the only libraries during several ages, it was deemed a donative of such value, that he offered it on the altar *pro remedio animæ suæ*, in order to obtain the forgiveness of his sins. Murat. vol. iii. p. 836. Hist. Littér. de France, tom. vi. p. 6. Nouv. Trait. de Diplomat. par deux Bénédictins, 4to, tom. i. p. 481. In the eleventh century, the art of making paper, in the manner now become universal, was invented; by means of that, not only the number of manuscripts increased, but the study of the sciences was wonderfully facilitated. Murat. ib. p. 871. The invention of the art of making paper, and the invention of the art of printing, are two considerable events in literary history. It is remarkable, that the former preceded the first dawning of

letters and improvement in knowlege towards the close of the eleventh century: the latter ushered in the light which spread over Europe at the era of the Reformation.

Note XI. — Sect. I. p. 22.

All the religious maxims and practices of the Dark Ages are a proof of this. I shall produce one remarkable testimony in confirmation of it, from an author canonized by the Church of Rome, St. Eloy, or Egidius, bishop of Noyon, in the seventh century. "He is a good Christian who comes frequently to church; who presents the oblation which is offered to God upon the altar; who doth not taste of the fruits of his own industry until he has consecrated a part of them to God; who, when the holy festivals approach, lives chastely even with his own wife during several days, that with a safe conscience he may draw near the altar of God; and who, in the last place, can repeat the Creed and the Lord's Prayer. Redeem then your souls from destruction, while you have the means in your power: offer presents and tithes to churchmen; come more frequently to church; humbly implore the patronage of the saints; for, if you observe these things, you may come with security in the day of retribution to the tribunal of the Eternal Judge, and say, 'Give to us, O Lord, for we have given unto thee.'" Dacherii Spicilegium Vet. Script. vol. ii. p. 94. The learned and judicious translator of Dr. Mosheim's Ecclesiastical History, to one of whose additional notes I am indebted for my knowledge of this passage, subjoins a very proper reflection: "We see here a large and ample description of a good Christian, in which there is not the least mention of the love of God, resignation to his will, obedience to his laws, or of justice, benevolence, and charity towards men." Mosh. Eccles. Hist. vol. i. p. 324.

Note XII. — Sect. I. p. 23.

That infallibility in all its determinations, to which the Church of Rome pretends, has been attended with one unhappy consequence. As it is impossible to relinquish any opinion, or to alter any practice, which has been established by authority that cannot err, all its institutions and ceremonies must be immutable and everlasting, and the Church must continue to observe, in enlightened times, those rites which were introduced during the ages of darkness and credulity. What delighted and edified the latter, must disgust and shock the former. Many of the rites observed in the Romish Church appear manifestly to have been introduced by a superstition of the lowest and most illiberal species. Many of them were borrowed, with little variation, from the religious ceremonies established among the ancient heathens. Some were so ridiculous, that, if every age did not furnish instances of the fascinating influence of superstition, as well as of the whimsical forms which it assumes, it must appear incredible that they should have been ever received or tolerated. In several churches of France, they celebrated a festival in commemoration of the Virgin Mary's flight into Egypt. It was called the Feast of the Ass. A young girl, richly dressed, with a child in her arms, was set upon an ass superbly caparisoned. The ass was led to the altar in solemn procession. High mass was said with great pomp. The ass was taught to kneel at proper places; a hymn no less childish than impious was sung in his praise; and, when the ceremony was ended, the priest, instead of the usual words with which he dismissed the people, brayed three times like an ass; and the people, instead of the usual response, "We bless the Lord," brayed three times in the same manner. Du Cange, voc. *Festum*, vol. iii. p.

424. This ridiculous ceremony was not, like the festival of fools, and some other pageants of those ages, a mere farcical entertainment exhibited in a church, and mingled, as was then the custom, with an imitation of some religious rites; it was an act of devotion, performed by the ministers of religion, and by the authority of the Church. However, as this practice did not prevail universally in the Catholic Church, its absurdity contributed at last to abolish it.

Note XIII. — Sect. I. p. 28.

As there is no event in the history of mankind more singular than that of the crusades, every circumstance that tends to explain or to give any rational account of this extraordinary frenzy of the human mind is interesting. I have asserted in the text, that the minds of men were prepared gradually for the amazing effort which they made in consequence of the exhortations of Peter the Hermit, by several occurrences previous to his time. A more particular detail of this curious and obscure part of history may perhaps appear to some of my readers to be of importance. That the end of the world was expected about the close of the tenth and beginning of the eleventh century, and that this occasioned a general alarm, is evident, from the authors to whom I have referred in the text. This belief was so universal and so strong, that it mingled itself with civil transactions. Many charters, in the latter part of the tenth century, begin in this manner: "Appropinquante mundi termino," &c. As the end of the world is now at hand, and by various calamities and judgments the signs of its approach are now manifest. Hist. de Langued. par D. D. de Vic. et Vaisette, tom. ii. Preuves, pp. 86, 89, 90, 117, 158, &c. One effect of this opinion was, that a

great number of pilgrims resorted to Jerusalem, with a resolution to die there, or to wait the coming of the Lord; kings, earls, marquises, bishops, and even a great number of women, besides persons of an inferior rank, flocked to the Holy Land. Glaber. Rodulph. Hist. apud Bouquet, Recueil, tom. x. pp. 50, 52. Another historian mentions a vast cavalcade of pilgrims who accompanied the count of Angoulême to Jerusalem in the year 1026. Chronic. Ademari, ibid. p. 162. Upon their return, these pilgrims filled Europe with lamentable accounts of the state of Christians in the Holy Land. Willerm. Tyr. Hist. ap. Gest. Dei per Franc. vol. ii. p. 636. Guibert. Abbat. Hist. ibid. vol. i. p. 476. Besides this, it was usual for many of the Christian inhabitants of Jerusalem, as well as of other cities in the East, to travel as mendicants through Europe; and, by describing the wretched condition of the professors of the Christian faith under the dominion of infidels, to extort charity, and to excite zealous persons to make some attempt, in order to deliver them from oppression. Baldrici Archiepiscopi Histor. ap. Gesta Dei, &c., vol. i. p. 86. In the year 986, Gerbert, archbishop of Ravenna, afterwards Pope Silvester II., addressed a letter to all Christians in the name of the church of Jerusalem. It is eloquent and pathetic, and contains a formal exhortation to take arms against the pagan oppressors, in order to rescue the holy city from their yoke. Gerberti Epistolæ, ap. Bouquet, Recueil, tom. x. p. 426. In consequence of this spirited call, some subjects of the republic of Pisa equipped a fleet, and invaded the territories of the Mahometans in Syria. Murat. Script. Rer. Italic. vol. iii. p. 400. The alarm was taken in the East, and an opinion prevailed, A. D. 1010, that all the forces of Christendom were to unite, in order to drive the Mahometans out of Palestine. Chron. Ademari, ap. Bouquet, tom. x. p. 152. It is evi-

dent, from all these particulars, that the ideas which led the crusaders to undertake their wild enterprise did not arise, according to the description of many authors, from a sudden fit of frantic enthusiasm, but were gradually formed; so that the universal concourse to the standard of the cross, when erected by Urban II., will appear less surprising.

If the various circumstances which I have enumerated in this note, as well as in the history, are sufficient to account for the ardor with which such vast numbers engaged in such a dangerous undertaking, the extensive privileges and immunities granted to the persons who assumed the cross serve to account for the long continuance of this spirit in Europe. 1. They were exempted from prosecutions on account of debt during the time of their being engaged in this holy service. Du Cange, voc. *Crucis Privilegium*, vol. ii. p. 1194. — 2. They were exempted from paying interest for the money which they had borrowed, in order to fit them for this sacred warfare. Ibid. — 3. They were exempted either entirely, or at least during a certain time, from the payment of taxes. Ibid. Ordonnances des Rois de France, tom. i. p. 33. — 4. They might alienate their lands without the consent of the superior lord of whom they held. Ibid. — 5. Their persons and effects were taken under the protection of St. Peter, and the anathemas of the Church were denounced against all who should molest them, or carry on any quarrel or hostility against them, during their absence, on account of the holy war. Du Cange, Ibid. Guibertus Abbas, ap. Bongars. i. pp. 480, 482. — 6. They enjoyed all the privileges of ecclesiastics, and were not bound to plead in any civil court, but were declared subject to the spiritual jurisdiction alone. Du Cange, Ibid. Ordon. des Rois, tom. i. pp. 34, 174. — 7. They obtained a plenary remission of all their sins, and the gates of

neaven were set open to them, without requiring any other proof of their penitence but their engaging in this expedition; and thus, by gratifying their favorite passion, the love of war, they secured to themselves immunities which were not usually obtained but by paying large sums of money, or by undergoing painful penances. Guibert. Abbas, p. 480. When we behold the civil and ecclesiastical powers vying with each other, and straining their invention, in order to devise expedients for encouraging and adding strength to the spirit of superstition, can we be surprised that it should become so general as to render it infamous, and a mark of cowardice, to decline engaging in the holy war? Willerm. Tyriensis, ap. Bongars. vol. ii. p. 641. The histories of the crusades, written by modern authors, who are apt to substitute the ideas and maxims of their own age in the place of those which influenced the persons whose actions they attempt to relate, convey a very imperfect notion of the spirit at that time predominant in Europe. The original historians, who were animated themselves with the same passions which possessed their contemporaries, exhibit to us a more striking picture of the times and manners which they describe. The enthusiastic rapture with which they account for the effects of the pope's discourse in the Council of Clermont; the exultation with which they mention the numbers who devoted themselves to this holy warfare; the confidence with which they express their reliance on the divine protection; the ecstasy of joy with which they describe their taking possession of the holy city,—will enable us to conceive in some degree the extravagance of that zeal which agitated the minds of men with such violence, and will suggest as many singular reflections to a philosopher as any occurrence in the history of mankind. It is unnecessary to select the particular passages in the several

historians which confirm this observation. But lest those authors may be suspected of adorning their narrative with any exaggerated description, I shall appeal to one of the leaders who conducted the enterprise. There is extant a letter from Stephen, the earl of Chartres and Blois, to Adela his wife, in which he gives her an account of the progress of the crusaders. He describes the crusaders as the chosen army of Christ, as the servants and soldiers of God, as men who marched under the immediate protection of the Almighty, being conducted by his hand to victory and conquest. He speaks of the Turks as accursed, sacrilegious, and devoted by Heaven to destruction; and when he mentions the soldiers in the Christian army who had died, or were killed, he is confident that their souls were admitted directly into the joys of Paradise. Dacherii Spicilegium, vol. iv. p. 257.

The expense of conducting numerous bodies of men from Europe to Asia must have been excessive, and the difficulty of raising the necessary sums must have been proportionally great, during ages when the public revenues in every nation of Europe were extremely small. Some account is preserved of the expedients employed by Humbert II., Dauphin of Vienne, in order to levy the money requisite towards equipping him for the crusade, A. D. 1346. These I shall mention, as they tend to show the considerable influence which the crusades had both on the state of property and of civil government. 1. He exposed to sale part of his domains; and as the price was destined for such a sacred service, he obtained the consent of the French king, of whom these lands were held, ratifying the alienation. Hist. de Dauphiné, tom. i. pp. 332, 335. — 2. He issued a proclamation, in which he promised to grant new privileges to the nobles, as well as new immunities to the cities and towns in his territories, in consideration of certain sums which they

were instantly to pay on that account. Ibid. tom. ii. p. 512. Many of the charters of community, which I shall mention in another note, were obtained in this manner. —3. He exacted a contribution towards defraying the charges of the expedition from all his subjects, whether ecclesiastics or laymen, who did not accompany him in person to the East. Ibid. tom. i. p. 335.—4. He appropriated a considerable part of his usual revenues for the support of the troops to be employed in this service. Ibid. tom. ii. p. 518.—5. He exacted considerable sums, not only of the Jews settled in his dominions, but also of the Lombards and other bankers who had fixed their residence there. Ibid. tom. i. p. 338, tom. ii. p. 528. Notwithstanding the variety of these resources, the dauphin was involved in such expense by this expedition, that, on his return, he was obliged to make new demands on his subjects, and to pillage the Jews by fresh exactions. Ibid. tom. i. pp. 344, 347. When the Count de Foix engaged in the first crusade, he raised the money necessary for defraying the expenses of that expedition by alienating part of his territories. Hist. de Langued. par D. D. de Vict. et Vaisette, tom. ii. p. 287. In like manner Baldwin, count of Hainault, mortgaged or sold a considerable portion of his dominions to the bishop of Liege, A. D. 1096. Du Mont, Corps Diplomatique, tom. i. p. 59. At a later period, Baldwin, count of Namur, sold part of his estate to a monastery, when he intended to assume the cross, A. D. 1239. Miræi Oper. i. p. 313.

NOTE XIV.—Sect. I. p. 33.

The usual method of forming an opinion concerning the comparative state of manners in two different nations is by attending to the facts which historians relate concerning each of them. Various passages might

be selected from the Byzantine historians, describing the splendor and magnificence of the Greek empire. P. de Montfaucon has produced from the writings of St. Chrysostom a very full account of the elegance and luxury of the Greeks in his age. That father, in his sermons, enters into such minute details concerning the manners and customs of his contemporaries as appear strange in discourses from the pulpit. P. de Montfaucon has collected these descriptions, and ranged them under different heads. The court of the more early Greek emperors seems to have resembled those of Eastern monarchs, both in magnificence and in corruption of manners. The emperors in the eleventh century, though inferior in power, did not yield to them in ostentation and splendor. Mémoires de l'Acad. des Inscript. tom. xx. p. 197. — But we may decide concerning the comparative state of manners in the Eastern empire, and among the nations in the West of Europe, by another method, which, if not more certain, is at least more striking. As Constantinople was the place of rendezvous for all the armies of the crusaders, this brought together the people of the East and West as to one great interview. There are extant several contemporary authors, both among the Greeks and Latins, who were witnesses of this singular congress of people, formerly strangers, in a great measure, to each other. They describe, with simplicity and candor, the impression which that new spectacle made upon their own minds. This may be considered as the most lively and just picture of the real character and manners of each people. When the Greeks speak of the Franks, they describe them as barbarians, fierce, illiterate, impetuous, and savage. They assume a tone of superiority, as a more polished people, acquainted with the arts both of government and of elegance, of which the other was ignorant. It is thus Anna Comnena describes the

manners of the Latins, Alexias, pp. 224, 231, 237, ap. Byz. Script. vol. ix. She always views them with contempt as a rude people, the very mention of whose names was sufficient to contaminate the beauty and elegance of history, p. 229. Nicetas Choniatas inveighs against them with still more violence, and gives an account of their ferocity and devastations in terms not unlike those which preceding historians had employed in describing the incursions of the Goths and Vandals. Nicet. Chon. ap. Byz. Script. vol. iii. p. 302, &c. But, on the other hand, the Latin historians were struck with astonishment at the magnificence, wealth, and elegance which they discovered in the Eastern empire. "O what a vast city is Constantinople," exclaims Fulcherius Carnotensis, when he first beheld it, "and how beautiful! How many monasteries are there in it, and how many palaces built with wonderful art! How many manufactures are there in the city amazing to behold! It would be astonishing to relate how it abounds with all good things, with gold, silver, and stuffs of various kinds; for every hour ships arrive in its port laden with all things necessary for the use of man." Fulcher. ap. Bongars. vol. i. p. 386. Willermus, archbishop of Tyre, the most intelligent historian of the crusades, seems to be fond, on every occasion, of describing the elegance and splendor of the court of Constantinople, and adds, that what he and his countrymen observed there exceeded any idea which they could have formed of it, "nostrarum enim rerum modum et dignitatem excedunt." Willerm. Tyr. ap. Bong. vol. ii. pp. 657, 664. Benjamin the Jew, of Tudela in Navarre, who began his travels A. D. 1173, appears to have been equally astonished at the magnificence of that city, and gives a description of its splendor in terms of high admiration. Benj. Tudel. ap. Les Voyages faits dans les 12e, 13e, &c. Siècles, par Berge-

ron, p. 10, &c. Guntherus, a French monk, who wrote a history of the conquest of Constantinople by the crusaders, in the thirteenth century, speaks of the magnificence of that city in the same tone of admiration: "Structuram autem ædificiorum in corpore civitatis, in ecclesiis videlicet, et turribus, et in domibus magnatorum, vix ullus vel describere potest, vel credere describenti, nisi qui ea oculata fide cognoverit." Hist. Constantinop. ap. Canisii Lectiones Antiquas, fol. Antw. 1725, vol. iv. p. 14. Geoffrey de Villehardouin, a nobleman of high rank, and accustomed to all the magnificence then known in the West, describes, in similar terms, the astonishment and admiration of such of his fellow-soldiers as beheld Constantinople for the first time: "They could not have believed," says he, "that there was a city so beautiful and so rich in the whole world. When they viewed its high walls, its lofty towers, its rich palaces, its superb churches, all appeared so great, that they could have formed no conception of this sovereign city, unless they had seen it with their own eyes." Histoire de la Conquête de Constant. p. 49. From these undisguised representations of their own feelings, it is evident, that to the Greeks the crusaders appeared to be a race of rude, unpolished barbarians; whereas the latter, how much soever they might contemn the unwarlike character of the former, could not help regarding them as far superior to themselves in elegance and arts. — That the state of government and manners was much more improved in Italy than in the other countries of Europe, is evident not only from the facts recorded in history, but it appears that the more intelligent leaders of the crusaders were struck with the difference. Jacobus de Vitriaco, a French historian of the holy war, makes an elaborate panegyric on the character and manners of the Italians. He views them as a more polished

people, and particularly celebrates them for their love of liberty, and civil wisdom: "in consiliis circumspecti, in re suâ publicâ procurandâ diligentes et studiosi; sibi in posterum providentes; aliis subjici renuentes; ante omnia libertatem sibi defendentes; sub uno quem eligunt capitaneo, communitati suæ jura et instituta dictantes et similiter observantes." Histor. Hierosol. ap. Gesta Dei per Francos, vol. ii. p. 1085.

Note XV. — Sect. I. p. 38.

The different steps taken by the cities of Italy, in order to extend their power and dominions, are remarkable. As soon as their liberties were established, and they began to feel their own importance, they endeavored to render themselves masters of the territory round their walls. Under the Romans, when cities enjoyed municipal privileges and jurisdiction, the circumjacent lands belonged to each town, and were the property of the community. But as it was not the genius of the feudal policy to encourage cities, or to show any regard for their possessions and immunities, these lands had been seized, and shared among the conquerors. The barons to whom they were granted erected their castles almost at the gates of the city, and exercised their jurisdiction there. Under pretence of recovering their ancient property, many of the cities in Italy attacked these troublesome neighbors, and, dispossessing them, annexed their territories to the communities, and made thereby a considerable addition to their power. Several instances of this occur in the eleventh, and beginning of the twelfth centuries. Murat. Antiq. Ital. vol. iv. p. 159, &c. Their ambition increasing together with their power, the cities afterwards attacked several barons situated at a greater distance from their walls,

and obliged them to engage that they would become members of their community; that they would take the oath of fidelity to their magistrates; that they would subject their lands to all burdens and taxes imposed by common consent; that they would defend the community against all its enemies; and that they would reside within the city during a certain specified time in each year. Murat. ibid. p. 163. This subjection of the nobility to the municipal government established in cities became almost universal, and was often extremely grievous to persons accustomed to consider themselves as independent. Otto Frisingensis thus describes the state of Italy under Frederick I.: "The cities so much affect liberty, and are so solicitous to avoid the insolence of power, that almost all of them have thrown off every other authority, and are governed by their own magistrates. Insomuch that all that country is now filled with free cities, most of which have compelled their bishops to reside within their walls, and there is scarcely any nobleman, how great soever his power may be, who is not subject to the laws and government of some city." De Gestis Frider. I. Imp. lib. ii. c. 13, p. 453. In another place he observes of the marquis of Montferrat, that he was almost the only Italian baron who had preserved his independence, and had not become subject to the laws of any city. See also Muratori, Antichità Estensi, vol. i. pp. 411, 412. That state, into which some of the nobles were compelled to enter, others embraced from choice. They observed the high degree of security, as well as of credit and estimation, which the growing wealth and dominion of the great communities procured to all the members of them. They were desired to partake of these, and to put themselves under such powerful protection. With this view they voluntarily became citizens of the towns to which their lands were most contig-

uous; and, abandoning their ancient castles, took up their residence in the cities, at least during part of the year. Several deeds are still extant, by which some of the most illustrious families in Italy are associated as citizens of different cities. Murat. ibid. p. 165, &c. A charter, by which Atto de Macerata is admitted as a citizen of Osima, A. D. 1198, in the Marcha di Ancona, is still extant. In this he stipulates, that he will acknowledge himself to be a burgess of that community; that he will to the utmost of his power promote its honor and welfare; that he will obey its magistrates; that he will enter into no league with its enemies; that he will reside in the town during two months in every year, or for a longer time, if required by the magistrates. The community, on the other hand, take him, his family, and friends, under their protection, and engage to defend him against every enemy. Fr. Ant. Zacharias, Anecdota Medii Ævi, Aug. Taur. 1755, fol. p. 66. This privilege was deemed so important, that not only laymen, but ecclesiastics of the highest rank, condescended to be adopted as members of the great communities, in hopes of enjoying the safety and dignity which that condition conferred. Murat. ibid. p. 179. Before the institution of communities, persons of noble birth had no other residence but their castles. They kept their petty courts there; and the cities were deserted, having hardly any inhabitants but slaves or persons of low condition. But in consequence of the practice which I have mentioned, cities not only became more populous, but were filled with inhabitants of better rank, and a custom which still subsists in Italy was then introduced, that all families of distinction reside more constantly in the great towns, than is usual in other parts of Europe. As cities acquired new consideration and dignity by the accession of such citizens, they be-

came more solicitous to preserve their liberty and independence. The emperors, as sovereigns, had anciently a palace in almost every great city of Italy; when they visited that country, they were accustomed to reside in these palaces, and the troops which accompanied them were quartered in the houses of the citizens. This the citizens deemed both ignominious and dangerous. They could not help considering it as receiving a master and an enemy within their walls. They labored, therefore, to get free of this subjection. Some cities prevailed on the emperors to engage that they would never enter their gates, but take up their residence without the walls. Chart. Hen. IV. Murat. ibid. p. 24. Others obtained the imperial license to pull down the palace situated within their liberties, on condition that they built another in the suburbs for the occasional reception of the emperor. Chart. Hen. IV Murat. ibid. p. 25. These various encroachments of the Italian cities alarmed the emperors, and put them on schemes for re-establishing the imperial jurisdiction over them on its ancient footing. Frederick Barbarossa engaged in this enterprise with great ardor. The free cities of Italy joined together in a general league, and stood on their defence; and after a long contest, carried on with alternate success, a solemn treaty of peace was concluded at Constance, A. D. 1183, by which all the privileges and immunities granted by former emperors to the principal cities in Italy were confirmed and ratified. Murat. Dissert. XLVIII. This treaty of Constance was considered as such an important article in the jurisprudence of the Middle Ages, that it is usually published together with the Libri Feudorum at the end of the Corpus Juris Civilis. The treaty secured privileges of great importance to the confederate cities, and though it reserved a considerable degree of authority and jurisdiction to

the empire, yet the cities persevered with such vigor in their efforts in order to extend their immunities, and the conjunctures in which they made them were so favorable, that, before the conclusion of the thirteenth century, most of the great cities in Italy had shaken off all marks of subjection to the empire, and were become independent sovereign republics. It is not requisite that I should trace the various steps by which they advanced to this high degree of power, so fatal to the empire and so beneficial to the cause of liberty in Italy. Muratori, with his usual industry, has collected many original papers which illustrate this curious and little known part of history. Murat. Antiq. Ital. Dissert. L. See also Jo. Bapt. Villanovæ Hist. Laudis Pompeii sive Lodi, in Græv. Thes. Antiquit. Ital. vol. iii. p. 888.

Note XVI. — Sect. I. p. 39.

Long before the institution of communities in France, charters of immunity or franchise were granted to some towns and villages by the lords on whom they depended. But these are very different from such as became common in the twelfth and thirteenth centuries. They did not erect these towns into corporations; they did not establish a municipal government; they did not grant them the privilege of bearing arms. They contained nothing more than a manumission of the inhabitants from the yoke of servitude; an exemption from certain services which were oppressive and ignominious; and the establishment of a fixed tax or rent which the citizens were to pay to their lord in place of impositions which he could formerly lay upon them at pleasure. Two charters of this kind to two villages in the county of Rousillon, one in A. D. 974, the other in A. D. 1025, are still extant. Petr. de Marca, *Marca*, sive Limes

Hispanicus, App. pp. 909, 1038. Such concessions, it is probable, were not unknown in other parts of Europe, and may be considered as a step towards the more extensive privileges conferred by Louis le Gros on the towns within his domains. The communities in France never aspired to the same independence with those in Italy. They acquired new privileges and immunities, but the right of sovereignty remained entire to the king or baron within whose territories the respective cities were situated, and from whom they received the charter of their freedom. A great number of these charters, granted both by the kings of France and by their great vassals, are published by M. d'Achery in his Spicilegium, and many are found in the collection of the Ordonnances des Rois de France. These convey a very striking representation of the wretched condition of cities previous to the institution of communities, when they were subject to the judges appointed by the superior lords of whom they held, and who had scarcely any other law but their will. Each concession in these charters must be considered as a grant of some new privileges which the people did not formerly enjoy, and each regulation as a method of redressing some grievance under which the inhabitants of cities formerly labored. The charters of communities contain likewise the first expedients employed for the introduction of equal laws and regular government. On both these accounts they merit particular attention, and therefore, instead of referring my readers to the many bulky volumes in which they are scattered, I shall give them a view of some of the most important articles in these charters, ranged under two general heads. I. Such as respect personal safety. II. Such as respect the security of property.

I During that state of turbulence and disorder which the corruption of the feudal government introduced into

Europe, personal safety was the first and great object of every individual; and as the great military barons alone were able to give sufficient protection to their vassals, this was one great source of their power and authority. But, by the institution of communities, effectual provision was made for the safety of individuals, independent of the nobles. For, 1. The fundamental article in every charter was, that all the members of the community bound themselves by oath to assist, defend, and stand by each other against all aggressors, and that they should not suffer any person to injure, distress, or molest any of their fellow-citizens. D'Acher. Spicil. x. 642; xi. 341, &c. — 2. Whoever resided in any town which was made free, was obliged, under a severe penalty, to accede to the community, and to take part in the mutual defence of its members. D'Acher. Spicil. xi. 344. — 3. The communities had the privilege of carrying arms; of making war on their private enemies; and of executing by military force any sentence which their magistrates pronounced. D'Acher. Spicil. x. 643, 644; xi. 343. — 4. The practice of making satisfaction by a pecuniary compensation for murder, assault, or other acts of violence, most inconsistent with the order of society and the safety of individuals, was abolished; and such as committed these crimes were punished capitally, or with rigor adequate to their guilt. D'Ach. xi. 362. Miræi Opera Diplomatica, i. 292. — 5. No member of a community was bound to justify or defend himself by battle or combat; but, if he was charged with any crime, he could be convicted only by the evidence of witnesses, and the regular course of legal proceedings. Miræus, ibid. D'Ach. xi. 375, 349. Ordon. tom. iii. p. 265. — 6. If any man suspected himself to be in danger from the malice or enmity of another, upon his making oath to that effect before a magistrate, the

person suspected was bound under a severe penalty to give security for his peaceable behavior. D'Ach. xi. 346. This is the same species of security which is still known in Scotland under the name of *law burrows*. In France, it was first introduced among the inhabitants of communities, and having been found to contribute considerably towards personal safety, it was extended to all the other members of the society. Etablissemens de St. Louis, liv. i. cap. 28, ap. Du Cange, Vie de St. Louis, p. 15.

II. The provisions in the charters of communities concerning the security of property are not less considerable than those respecting personal safety. By the ancient law of France, no person could be arrested or confined in prison on account of any private debt. Ordon. des Rois de France, tom. i. pp. 72, 80. If any person was arrested upon any pretext but his having been guilty of a capital crime, it was lawful to rescue him out of the hands of the officers who had seized him. Ordon. iii. p. 17. Freedom from arrest, on account of debt, seems likewise to have been enjoyed in other countries. Gudenus, Sylloge Diplom. 473. In society, while it remained in its rudest and most simple form, debt seems to have been considered as an obligation merely personal. Men had made some progress towards refinement, before creditors acquired a right of seizing the property of their debtors, in order to recover payment. The expedients for this purpose were all introduced originally in communities, and we can trace the gradual progress of them. 1. The simplest and most obvious species of security was, that the person who sold any commodity should receive a pledge from him who bought it, which he restored upon receiving payment. Of this custom there are vestiges in several charters of community. D'Ach. ix. 185; xi. 377.—2. When no pledge was given, and the debtor

became refractory or insolvent, the creditor was allowed to seize his effects with a strong hand, and by his private authority; the citizens of Paris are warranted by the royal mandate, "ut ubicumque, et quocumque modo poterunt, tantum capiant, unde pecuniam sibi debitam integrè et plenariè habeant, et inde sibi invicem adjutores existant." Ordon. &c. tom. i. p. 6. This rude practice, suitable only to the violence of that which has been called a state of nature, was tolerated longer than one can conceive to be possible in any society where laws and order were at all known. The ordinance authorizing it was issued A. D. 1134; and that which corrects the law, and prohibits creditors from seizing the effects of their debtors, unless by a warrant from a magistrate, and under his inspection, was not published until the year 1351. Ordon. tom. ii. p. 438. It is probable, however, that men were taught, by observing the disorders which the former mode of proceeding occasioned, to correct it in practice long before a remedy was provided by a law to that effect. Every discerning reader will apply this observation to many other customs and practices which I have mentioned. New customs are not always to be ascribed to the laws which authorize them. Those statutes only give a legal sanction to such things as the experience of mankind has previously found to be proper and beneficial. — 3. As soon as the interposition of the magistrate became requisite, regular provision was made for attaching or distraining the movable effects of a debtor; and if his movables were not sufficient to discharge the debt, his immovable property, or estate in land, was liable to the same distress, and was sold for the benefit of his creditor. D'Ach. ix. pp. 184, 185; xi. pp. 348, 380. As this regulation afforded the most complete security to the creditor, it was considered as so severe, that humanity pointed out

several limitations in the execution of it. Creditors were prohibited from seizing the wearing apparel of their debtors, their beds, the door of their house, their instruments of husbandry, &c. D'Ach. ix. p. 184; xi. p. 377. Upon the same principles, when the power of distraining effects became more general, the horse and arms of a gentleman could not be seized. D'Ach. ix. p. 185. As hunting was the favorite amusement of martial nobles, the Emperor Ludovicus Pius prohibited the seizing of a hawk on account of any composition or debt. Capitul. lib. iv. § 21. But if the debtor had no other movables, even these privileged articles might be seized. — 4. In order to render the security of property complete within a community, every person who was admitted a member of it was obliged to buy or build a house, or to purchase lands within its precincts, or at least to bring into the town a considerable portion of his movables, *per quæ justiciari possit, si quid fortè in eum querelæ evenerit.* D'Ach. xi. p. 326. Ordon. i. p. 367. Libertates S. Georgii de Esperanchia, Hist. de Dauphiné, tom. i. p. 26. — 5. That security might be as perfect as possible, in some towns the members of the community seem to have been bound for each other. D'Ach. x. p. 644. — 6. All questions with respect to property were tried within the community, by magistrates and judges whom the citizens elected or appointed. Their decisions were more equal and fixed than the sentences which depended on the capricious and arbitrary will of a baron, who thought himself superior to all laws. D'Ach. x. pp. 644, 646; xi. p. 344, et passim. Ordon. iii. p. 204. — 7. No member of a community could be burdened by any arbitrary tax; for the superior lord, who granted the charter of community, accepted of a fixed census or duty in lieu of all demands. Ordon. tom. iii. p. 204. Libertates de Calma, Hist. de Dauphiné, tom. i. p. 19. Libertates S.

Georgii de Esperanchia, ibid. p. 26. Nor could the members of a community be distressed by an unequal imposition of the sum to be levied on the community. Regulations are inserted in the charters of some communities, concerning the method of determining the quota of any tax to be levied on each inhabitant. D'Ach. xi. pp. 350, 365. St. Louis published an ordinance concerning this matter, which extended to all the communities. Ordon. tom. i. p. 186. These regulations are extremely favorable to liberty, as they vest the power of proportioning the taxes in a certain number of citizens chosen out of each parish, who were bound, by solemn oath, to decide according to justice. — That the more perfect security of property was one great object of those who instituted communities, we learn, not only from the nature of the thing, but from the express words of several charters, of which I shall only mention that granted by Alienor, queen of England and duchess of Guienne, to the community of Poitiers, "ut sua propria melius defendere possint, et magis integrè custodire." Du Cange, voc. *Communia*, vol. ii. p. 863. — Such are some of the capital regulations established in communities during the twelfth and thirteenth centuries. These may be considered as the first expedients for the re-establishment of law and order, and contributed greatly to introduce regular government among all the members of society. As soon as communities were instituted, high sentiments of liberty began to manifest themselves. When Humbert, lord of Beaujeu, upon granting a charter of community to the town of Belleville, exacted of the inhabitants an oath of fidelity to himself and successors, they stipulated, on their part, that he should swear to maintain their franchises and liberties; and, for their greater security, they obliged him to bring twenty gentlemen to take the same oath, and to be bound together with him. D'Ach

ix. p 183. In the same manner, the lord of Moriens in Dauphiné produced a certain number of persons as his sureties for the observation of the articles contained in the charter of community to that town. These were bound to surrender themselves prisoners to the inhabitants of Moriens, if their liege-lord should violate any of their franchises, and they promised to remain in custody until he should grant the members of the community redress. Hist. de Dauphiné, tom. i. p. 17. If the mayor or chief magistrate of a town did any injury to a citizen, he was obliged to give security for his appearance in judgment, in the same manner as a private person; and if cast, was liable to the same penalty. D'Ach. ix. p. 183. These are ideas of equality uncommon in the feudal times. Communities were so favorable to freedom, that they were distinguished by the name of *libertates*. Du Cange, vol. ii. p. 863. They were at first extremely odious to the nobles, who foresaw what a check they must prove to their power and domination. Guibert, abbot of Nogent, calls them execrable inventions, by which, contrary to law and justice, slaves withdrew themselves from that obedience which they owed to their masters. Du Cange, ibid. p. 862. The zeal with which some of the nobles and powerful ecclesiastics opposed the establishment of communities, and endeavored to circumscribe their privileges, was extraordinary. A striking instance of this occurs in the contests between the archbishop of Rheims and the inhabitants of that community. It was the chief business of every archbishop, during a considerable time, to abridge the rights and jurisdiction of the community; and the great object of the citizens, especially when the see was vacant, to maintain, to recover, and to extend their own jurisdiction. Histoire Civile et Politique de la Ville de Reims, par M. Anquetil, tom. i. p. 287, &c.

The observations which I have made concerning the low state of cities, and the condition of their inhabitants, are confirmed by innumerable passages in the historians and laws of the Middle Ages. It is not improbable, however, that some cities of the first order were in a better state, and enjoyed a superior degree of liberty. Under the Roman government, the municipal government established in cities was extremely favorable to liberty. The jurisdiction of the senate in each corporation, and the privileges of the citizens, were both extensive. There is reason to believe that some of the greater cities, which escaped the destructive rage of the barbarous nations, still retained their ancient form of government, at least in a great measure. They were governed by a council of citizens, and by magistrates whom they themselves elected. Very strong presumptions in favor of this opinion are produced by M. l'Abbé de Bos, Hist. Crit. de la Mon. Franç. tom. i. p. 18, &c., tom. ii. p. 524, edit. 1742. It appears from some of the charters of community to cities, granted in the twelfth and thirteenth centuries, that these only confirm the privileges possessed by the inhabitants previous to the establishment of the community. D'Acher. Spicileg. vol. xi. p. 345. Other cities claimed their privileges, as having possessed them without interruption from the times of the Romans. Hist. Crit. de la Mon. Franç. tom. ii. p. 333. But the number of cities which enjoyed such immunities was so small, as hardly, in any degree, to diminish the force of my conclusions in the text.

Note XVII. — Sect. I. p. 39.

Having given a full account of the establishment, as well as effects, of communities in Italy and France, it will be necessary to inquire, with some attention, into the

progress of cities and of municipal government in Germany. The ancient Germans had no cities. Even in their hamlets or villages they did not build their houses contiguous to each other. Tacit. de Mor. Germ. cap. 16. They considered it as a badge of servitude to be obliged to dwell in a city surrounded with walls. When one of their tribes had shaken off the Roman yoke, their countrymen required of them, as an evidence of their having recovered liberty, to demolish the walls of a town which the Romans had built in their country. Even the fiercest animals, said they, lose their spirit and courage when they are confined. Tacit. Histor. lib. iv. c. 64. The Romans built several cities of note on the banks of the Rhine. But in all the vast countries from that river to the coasts of the Baltic, there was hardly one city previous to the ninth century of the Christian era. Conringius, Exercitatio de Urbibus Germaniæ, Oper. vol. i. § 25, 27, 31, &c. Heineccius differs from Conringius with respect to this. But even after allowing to his arguments and authorities their utmost force, they prove only, that there were a few places in those extensive regions on which some historians have bestowed the name of towns. Elem. Jur. German. lib. i. § 102. Under Charlemagne, and the emperors of his family, as the political state of Germany began to improve, several cities were founded, and men became accustomed to associate and to live together in one place. Charlemagne founded two archbishoprics and nine bishoprics in the most considerable towns of Germany. Aub. Miræi Opera Diplomatica, vol. i. p. 16. His successors increased the number of these; and as bishops fixed their residence in the chief town of their diocese, and performed religious functions there, that induced many people to settle in them. Conring. ibid. § 48. But Henry, surnamed the Fowler, who began his reign A. D. 920, must be considered as the great

founder of cities in Germany. The empire was at that time infested by the incursions of the Hungarians and other barbarous people. In order to oppose them, Henry encouraged his subjects to settle in cities, which he surrounded with walls strengthened by towers. He enjoined or persuaded a certain proportion of the nobility to fix their residence in the towns, and thus rendered the condition of citizens more honorable than it had been formerly. Wittikindus, Annal. lib. i. ap. Conring. § 82. From this period the number of cities continued to increase, and they became more populous and more wealthy. But cities in Germany were still destitute of municipal liberty or jurisdiction. Such of them as were situated in the imperial demesnes were subject to the emperors. Their *comites*, *missi*, and other judges, presided in them, and dispensed justice. Towns situated on the estate of a baron were part of his fief, and he or his officers exercised a similar jurisdiction in them. Conring. ibid. § 73, 74. Heinec. Elem. Jur. Germ. lib. i. § 104. The Germans borrowed the institution of communities from the Italians. Knipschildius, Tractatus Politico-Histor. Jurid. de Civitatum Imperialium Juribus, vol. i. lib. i. cap. 5, No. 23. Frederick Barbarossa was the first emperor who, from the same political consideration that influenced Louis le Gros, multiplied communities, in order to abridge the power of the nobles. Pfeffel, Abrégé de l'Histoire et du Droit Publique d'Allemagne, 4to, p. 297. From the reign of Henry the Fowler to the time when the German cities acquired full possession of their immunities, various circumstances contributed to their increase. The establishment cf bishroprics (already mentioned), and the building of cathedrals, naturally induced many people to settle near the chief place of worship. It became the custom to hold councils and courts of judicature of every kind, ecclesiastical as well as civil, in cities. In the

eleventh century, many slaves were enfranchised, the greater part of whom settled in cities. Several mines were discovered and wrought in different provinces, which drew together such a concourse of people, as gave rise to several cities, and increased the number of inhabitants in others. Conring. § 105. The cities began, in the thirteenth century, to form leagues for their mutual defence, and for repressing the disorders occasioned by the private wars among the barons, as well as by their exactions. This rendered the condition of the inhabitants of cities more secure than that of any other order of men, and allured many to become members of their communities. Conring. § 94. There were inhabitants of three different ranks in the towns of Germany: the nobles, or *familiæ;* the citizens, or *liberi;* and the artisans, who were slaves, or *homines proprii;* Knipschild. lib. ii. cap. 29, No. 13. Henry V., who began his reign A. D. 1106, enfranchised the slaves who were artisans or inhabitants in several towns, and gave them the rank of citizens or *liberi.* Pfeffel, p. 254. Knipsch. lib. ii. c. 29, Nos. 113, 119. Though the cities in Germany did not acquire liberty so early as those in France, they extended their privileges much farther. All the imperial and free cities, the number of which is considerable, acquired the full right of being *immediate;* by which term, in the German jurisprudence, we are to understand, that they are subject to the empire alone, and possess within their own precincts all the rights of complete and independent sovereignty. The various privileges of the imperial cities, the great guardians of the Germanic liberties, are enumerated by Knipschild. lib. ii. The most important articles are generally known, and it would be improper to enter into any disquisition concerning minute particulars.

Note XVIII. — Sect. I. p. 39.

The Spanish historians are almost entirely silent concerning the origin and progress of communities in that kingdom; so that I cannot fix, with any degree of certainty, the time and manner of their first introduction there. It appears, however, from Mariana, vol. ii. p. 221, fol. Hagæ, 1736, that in the year 1350 eighteen cities had obtained a seat in the cortes of Castile. From the account which will be given of their constitution and pretensions, Sect. III. of this volume, it will appear that their privileges and form of government were the same with those of the other feudal corporations; and this, as well as the perfect similarity of political institutions and transactions in all the feudal kingdoms, may lead us to conclude, that communities were introduced there in the same manner, and probably about the same time, as in the other nations of Europe. In Aragon, as I shall have occasion to observe in a subsequent note, cities seem early to have acquired extensive immunities, together with a share in the legislature. In the year 1118, the citizens of Saragossa had not only attained political liberty, but they were declared to be of equal rank with the nobles of the second class; and many other immunities, unknown to persons in their rank of life in other parts of Europe, were conferred upon them. Zurita, Anales de Aragon, tom. i. p. 44. In England, the establishment of communities or corporations was posterior to the Conquest. The practice was borrowed from France, and the privileges granted by the crown were perfectly similar to those which I have enumerated. But as this part of history is well known to most of my readers, I shall, without entering into any critical or minute discussion, refer them to authors who have fully illustrated this interesting point in the English history. Brady's Trea-

tise of Boroughs. Madox, Firma Burgi, cap. i. sect. ix. Hume's History of England, vol. i. Append. i. and ii. It is not improbable that some of the towns in England were formed into corporations under the Saxon kings, and that the charters granted by the kings of the Norman race were not charters of enfranchisement from a state of slavery, but a confirmation of privileges which they already enjoyed. See Lord Lyttelton's History of Henry II. vol. ii. p. 317. The English cities, however, were very inconsiderable in the twelfth century. A clear proof of this occurs in the history to which I last referred. Fitzstephen, a contemporary author, gives a description of the city of London in the reign of Henry II., and the terms in which he speaks of its trade, its wealth, and the splendor of its inhabitants, would suggest no inadequate idea of its state at present, when it is the greatest and most opulent city of Europe. But all ideas of grandeur and magnificence are merely comparative; and every description of them in general terms is very apt to deceive. It appears from Peter of Blois, archdeacon of London, who flourished in the same reign, and who had good opportunity of being well informed, that this city, of which Fitzstephen gives such a pompous account, contained no more than forty thousand inhabitants. Ibid. pp. 315, 316. The other cities were small in proportion, and were not in a condition to extort any extensive privileges. That the constitution of the boroughs in Scotland, in many circumstances, resembled that of the towns in France and England, is manifest from the Leges Burgorum, annexed to the Regiam Majestatem.

Note XIX. — Sect. I. p. 45.

Soon after the introduction of the third estate into the national council, the spirit of liberty which that excited

in France began to produce conspicuous effects. In several provinces of France the nobility and communities formed associations, whereby they bound themselves to defend their rights and privileges against the formidable and arbitrary proceedings of the king. The Count de Boulainvilliers has preserved a copy of one of these associations, dated in the year 1314, twelve years after the admission of the deputies from towns into the states-general. Histoire de l'ancien Gouvernement de la France, tom. ii. p. 94. The vigor with which the people asserted and prepared to maintain their rights obliged their sovereigns to respect them. Six years after this association, Philip the Long issued a writ of summons to the community of Narbonne, in the following terms: "Philip, by the grace, &c., to our well-beloved, &c. As we desire with all our heart, and above all other things, to govern our kingdom and people in peace and tranquillity, by the help of God; and to reform our said kingdom in so far as it stands in need thereof, for the public good and for the benefit of our subjects, who in times past have been aggrieved and oppressed in divers manners by the malice of sundry persons, as we have learned by common report, as well as by the information of good men worthy of credit, and we having determined in our council which we have called to meet in our good city, &c., to give redress to the utmost of our power, by all ways and means possible, according to reason and justice, and willing that this should be done with solemnity and deliberation by the advice of the prelates, barons, and good towns of our realm, and particularly of you, and that it should be transacted agreeably to the will of God, and for the good of our people, therefore we command," &c. Mably, Observat. ii. App. p. 386. I shall allow these to be only the formal words of a public and legal style; but the ideas are singular, and much more

liberal and enlarged than one could expect in that age A popular monarch of Great Britain could hardly address himself to parliament in terms more favorable to public liberty. There occurs in the history of France a striking instance of the progress which the principles of liberty had made in that kingdom, and of the influence which the deputies of towns had acquired in the states-general. During the calamities in which the war with England and the captivity of King John had involved France, the states-general made a bold effort to extend their own privileges and jurisdiction. The regulations established by the states held A. D. 1355, concerning the mode of levying taxes, the administration of which they vested not in the crown, but in commissioners appointed by the states; concerning the coining of money; concerning the redress of the grievance of purveyance; concerning the regular administration of justice, — are much more suitable to the genius of a republican government than that of a feudal monarchy. This curious statute is published, Ordon. tom. iii. p. 19. Such as have not an opportunity to consult that large collection will find an abridgment of it in Hist. de France par Villaret, tom. ix. p. 130, or in Histoire de Boulainv. tom. ii. p. 213. The French historians represent the bishop of Laon, and Marcel, provost of the merchants of Paris, who had the chief direction of this assembly, as seditious tribunes, violent, interested, ambitious, and aiming at innovations subversive of the constitution and government of their country. That may have been the case; but these men possessed the confidence of the people; and the measures which they proposed as the most popular and acceptable, as well as most likely to increase their own influence, plainly prove that the spirit of liberty had spread wonderfully, and that the ideas which then prevailed in France concerning government were extremely liberal. The states-general held

at Paris A. D. 1355, consisted of about eight hundred members, and above one half of these were deputies from towns. M. Secousse, Préf. à Ordon. tom. iii. p. 48. It appears that, in all the different assemblies of the states held during the reign of John, the representatives of towns had great influence, and in every respect the third state was considered as co-ordinate and equal to either of the other two. Ibid. passim. These spirited efforts were made in France long before the House of Commons in England acquired any considerable influence in the legislature. As the feudal system was carried to its utmost height in France sooner than in England, so it began to decline sooner in the former than in the latter kingdom. In England, almost all attempts to establish or to extend the liberty of the people have been successful; in France, they have proved unfortunate. What were the accidental events or political causes which occasioned this difference, it is not my present business to inquire.

NOTE XX. — Sect. I. p. 47.

In a former Note [No. VIII.] I have inquired into the condition of that part of the people which was employed in agriculture, and have represented the various hardships and calamities of their situation. When charters of liberty or manumission were granted to such persons, they contained four concessions corresponding to the four capital grievances to which men in a state of servitude are subject. 1. The right of disposing of their persons by sale or grant was relinquished. 2. Power was given to them of conveying their property and effects by will or any other legal deed. Or if they happened to die intestate, it was provided that their property should go to their lawful heirs, in the same manner as the property of

other persons. 3. The services and taxes which they owed to their superior or liege-lord, which were formerly arbitrary, and imposed at pleasure, are precisely ascertained. 4. They are allowed the privilege of marrying according to their own inclination; formerly they could contract no marriage without their lord's permission, and with no person but one of his slaves. All these particulars are found united in the charter granted "Habitatoribus Montis Britonis," A. D. 1376. Hist. de Dauphiné, tom. i. p. 81. Many circumstances concurred with those which I have mentioned in the text in procuring them deliverance from that wretched state. The gentle spirit of the Christian religion; the doctrines which it teaches concerning the original equality of mankind; its tenets with respect to the Divine government, and the impartial eye with which the Almighty regards men of every condition, and admits them to a participation of his benefits, — are all inconsistent with servitude. But in this, as in many other instances, considerations of interest and the maxims of false policy led men to a conduct inconsistent with their principles. They were so sensible, however, of this inconsistency, that to set their fellow-Christians at liberty from servitude was deemed an act of piety highly meritorious and acceptable to Heaven. The humane spirit of the Christian religion struggled long with the maxims and manners of the world, and contributed more than any other circumstance to introduce the practice of manumission. When Pope Gregory the Great, who flourished toward the end of the sixth century, granted liberty to some of his slaves, he gives this reason for it: "Cum Redemptor noster, totius conditor naturæ, ad hoc propitiatus humanam carnem voluerit assumere, ut divinitatis suæ gratia, dirempto (quo tenebamur captivi) vinculo, pristinæ nos restitueret libertati; salubriter agitur, si homines, quos ab initio liberos natura

protulit, et jus gentium jugo substituit servitutis, in ea, qua nati fuerant, manumittentis beneficio, libertati reddantur." Gregor. Magn. ap. Potgiess. lib. iv. c. 1, § 3. Several laws or charters founded on reasons similar to this are produced by the same author. Accordingly, a great part of the charters of manumission, previous to the reign of Louis X., are granted "pro amore Dei, pro remedio animæ, et pro mercede animæ." Murat. Antiq. Ital. vol. i. pp. 849, 850. Du Cange, voc. *Manumissio.* The formality of manumission was executed in a church, as a religious solemnity. The person to be set free was led round the great altar with a torch in his hand, he took hold of the horns of the altar, and there the solemn words conferring liberty were pronounced. Du Cange, ibid. vol. iv. p. 467. I shall transcribe a part of a charter of manumission granted A. D. 1056, both as it contains a full account of the ceremonies used in this form of manumission, and as a specimen of the imperfect knowledge of the Latin tongue in that barbarous age. It is granted by Willa, the widow of Hugo, the duke and marquis, in favor of Clariza, one of her slaves. "Et ideo nos Domine Wille inclite cometisse — libera et absolvo te Cleriza filia Uberto — pro timore omnipotentis Dei, et remedio luminarie anime bone memorie quondam supra scripto Domini Ugo gloriossissimo, ut quando illum Dominus de hac vita migrare jusserit, pars iniqua non abeat potestatem ullam, sed anguelus Domini nostri Jesu Christi colocare dignitur illum inter sanctos dilectos suos; et beatus Petrus princips apostolorum, qui habed potestatem omnium animarum ligandi et absolvendi, ut ipsi absolvat animæ ejus de peccatis sui, aperiad illum janua paradisi; pro eadem vero rationi, in mano mite te, Benzo presbiter, ut vadat tecum in ecclesia sancti Bartholomæi apostoli; traad de tribus vicibus circa altare ipsius ecclesiæ cum cæreo apprehensum in manibus tuis et manibus suis;

deinde exite ambulate in via quadrubio, ubi quatuor vie se dividuntur. Statimque pro remedio luminarie anime bone memorie quondam supra scripto Domini Ugo et ipsi presbiter Benzo fecit omnia, et dixit, Ecce quatuor vie, ite et ambulate in quacunque partem tibi placuerit, tam sic supra scripta Cleriza, qua nosque tui heredes, qui ab ac hora in antea nati, vel procreati fuerit utriusque sexus," &c. Murat. ibid. p. 853. Many other charters might have been selected, which, in point of grammar or style, are in no wise superior to this. Manumission was frequently granted on death-bed or by latter will. As the minds of men are at that time awakened to sentiments of humanity and piety, these deeds proceeded from religious motives, and were granted *pro redemptione animæ*, in order to obtain acceptance with God. Du Cange, ubi supra, p. 470, et voc. *Servus*, vol. vi. p. 451. Another method of obtaining liberty was by entering into holy orders, or taking the vow in a monastery. This was permitted for some time, but so many slaves escaped, by this means, out of the hands of their masters, that the practice was afterwards restrained, and at last prohibited by the laws of almost all the nations of Europe. Murat. ibid. p. 842. Conformably to the same principles, princes, on the birth of a son, or upon any other agreeable event, appointed a certain number of slaves to be enfranchised, as a testimony of their gratitude to God for that benefit. Marculfi Form. lib. i. cap. 39. There are several forms of manumission published by Marculfus, and all of them are founded on religious considerations, in order to procure the favor of God, or to obtain the forgiveness of their sins. Lib. ii. c. 23, 33, 34, edit. Baluz. The same observation holds with respect to the other collections of Formulæ annexed to Marculfus. As sentiments of religion induced some to grant liberty to their fellow-Christians who groaned under the yoke of

servitude, so mistaken ideas concerning devotion led others to relinquish their liberty. When a person conceived an extraordinary respect for the saint who was the patron of any church or monastery in which he was accustomed to attend religious worship, it was not unusual, among men possessed with an excess of superstitious reverence, to give up themselves and their posterity to be the slaves of the saint. Mabillon, De Re Diplomat. lib. vi. 632. The *oblati*, or voluntary slaves of churches or monasteries, were very numerous, and may be divided into three different classes. The first were such as put themselves and effects under the protection of a particular church or monastery, binding themselves to defend its privileges and property against every aggressor. These were prompted to do so, not merely by devotion, but in order to obtain that security which arose from the protection of the Church. They were rather vassals than slaves, and sometimes persons of noble birth found it prudent to secure the protection of the Church in this manner. Persons of the second class bound themselves to pay an annual tax or quitrent out of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services. They were called *censuales*. The last class consisted of such as actually renounced their liberty, and became slaves in the strict and proper sense of the word. These were called *ministeriales*, and enslaved their bodies, as some of the charters bear, that they might procure the liberty of their souls. Potgiesserus, De Statu Servorum, lib. i. c. 1, § 6, 7. How zealous the clergy were to encourage the opinions which led to this practice, will appear from a clause in a charter by which one gives up himself as a slave to a monastery: "Cum sit omni carnali ingenuitate generosius extremum quodcumque Dei servitium, scilicet quod terrena nobilitas multos plerumque vitiorum servos

facit, servitus vero Christi nobiles virtutibus reddit, nemo autem sani capitis virtutibus vitia comparaverit, claret pro certo eum esse generosiorem, qui se Dei servitio præbuerit proniorem. Quod ego Ragnaldus intelligens," &c. Another charter is expressed in the following words: "Eligens magis esse servus Dei quam libertus sæculi, firmiter credens et sciens, quod servire Deo, regnare est, summaque ingenuitas sit in qua servitus comparabatur Christi," &c. Du Cange, voc. *Oblatus*, vol. iv. pp. 1286, 1287. Great, however, as the power of religion was, it does not appear that the enfranchisement of slaves was a frequent practice while the feudal system preserved its vigor. On the contrary, there were laws which set bounds to it as detrimental to society. Potgiess. lib. iv. c. 2, § 6. The inferior order of men owed the recovery of their liberty to the decline of that aristocratical policy which lodged the most extensive power in the hands of a few members of the society, and depressed all the rest. When Louis X. issued his ordinance, several slaves had been so long accustomed to servitude, and their minds were so much debased by that unhappy situation, that they refused to accept of the liberty which was offered them. D'Ach. Spicil. vol. xi. p. 387. Long after the reign of Louis X. several of the French nobility continued to assert their ancient dominion over their slaves. It appears from an ordinance of the famous Bertrand de Guesclin, constable of France, that the custom of enfranchising them was considered as a pernicious innovation. Morice, Mém. pour servir de Preuves à l'Hist. de Bret. tom. ii. p. 100. In some instances, when the prædial slaves were declared to be freemen, they were still bound to perform certain services to their ancient masters; and were kept in a state different from other subjects, being restricted either from purchasing land, or becoming members of a community within the

precincts of the manor to which they formerly belonged. Martene et Durand, Thesaur. Anecdot. vol. i. p. 914. This, however, seems not to have been common. — There is no general law for the manumission of slaves in the Statute-book of England, similar to that which has been quoted from the Ordonnances of the kings of France. Though the genius of the English constitution seems early to have favored personal liberty, personal servitude, nevertheless, continued long in England in some particular places. In the year 1514, we find a charter of Henry VIII. enfranchising two slaves belonging to one of his manors. Rym. Fœder. vol. xiii. p. 470. As late as the year 1574, there is a commission from Queen Elizabeth with respect to the manumission of certain bondmen belonging to her. Rymer, in Observat. on the Statutes, &c. p. 251.

Note XXI. — Sect. I. p. 54.

There is no custom in the Middle Ages more singular than that of private war. It is a right of so great importance, and prevailed so universally, that the regulations concerning it occupy a considerable place in the system of laws during the Middle Ages. M. de Montesquieu, who has unravelled so many intricate points in feudal jurisprudence, and thrown light on so many customs formerly obscure and unintelligible, was not led by his subject to consider this. I shall therefore give a more minute account of the customs and regulations which directed a practice so contrary to the present ideas of civilized nations concerning government and order. 1. Among the ancient Germans, as well as other nations in a similar state of society, the right of avenging injuries was a private and personal right exercised by force of arms, without any reference

to an umpire, or any appeal to a magistrate for decision. The clearest proofs of this were produced, Note VI.— 2. This practice subsisted among the barbarous nations after their settlement in the provinces of the empire which they conquered; and as the causes of dissension among them multiplied, their family feuds and private wars became more frequent. Proofs of this occur in their early historians. Greg. Turon. Hist. lib. vii. c. 2, lib. viii. c. 18, lib. x. c. 27, and likewise in the codes of their laws. It was not only allowable for the relations to avenge the injuries of their family, but it was incumbent on them. Thus, by the laws of the Angli and Werini, "ad quemcunque hereditas terræ pervenerit, ad illum vestis bellica, id est lorica et ultio proximi, et solatio leudis, debet pertinere," tit. vi. § 5, ap. Lindenbr. Leg. Saliq. tit. 63. Leg. Longob. lib. ii. tit. 14, § 10.— 3. None but gentlemen, or persons of noble birth, had the right of private war. All disputes between slaves, villani, the inhabitants of towns, and freemen of inferior condition, were decided in the courts of justice. All disputes between gentlemen and persons of inferior rank were terminated in the same manner. The right of private war supposed nobility of birth and equality of rank in both the contending parties. Beaumanoir, Coustumes de Beauv. ch. lix. p. 300. Ordon. des Rois de France, tom. ii. 395, § xvii. 508, § xv. &c. The dignified ecclesiastics likewise claimed and exercised the right of private war; but as it was not altogether decent for them to prosecute quarrels in person, *advocati* or *vidames* were chosen by the several monasteries and bishoprics. These were commonly men of high rank and reputation, who became the protectors of the churches and convents by which they were elected; espoused their quarrels, and fought their battles; "armis omnia quæ erant ecclesiæ viriliter defendebant, et vigi-

lanter protegebant." Brussel, Usage des Fiefs, tom. i. p. 144. Du Cange, voc. *Advocatus.* On many occasions, the martial ideas to which ecclesiastics of noble birth were accustomed made them forget the pacific spirit of their profession, and led them into the field in person, at the head of their vassals, "flamma, ferro, cæde, possessiones ecclesiarum prælati defendebant." Guido Abbas, ap. Du Cange, ibid. p. 179. — 4. It was not every injury or trespass that gave a gentleman a title to make war upon his adversary. Atrocious acts of violence, insults, and affronts, publicly committed, were legal and permitted motives for taking arms against the authors of them. Such crimes as are now punished capitally in civilized nations, at that time justified private hostilities. Beauman. ch. lix. Du Cange, Dissert. xxix. sur Joinville, p. 331. But though the avenging of injuries was the only motive that could legally authorize a private war, yet disputes concerning civil property often gave rise to hostilities, and were terminated by the sword. Du Cange, Dissert. p. 332. — 5. All persons present when any quarrel arose, or any act of violence was committed, were included in the war which it occasioned; for it was supposed to be impossible for any man in such a situation to remain neuter, without taking side with one or other of the contending parties. Beauman. p. 300. — 6. All the kindred of the two principals in the war were included in it, and obliged to espouse the quarrel of the chieftain with whom they were connected. Du Cange, ibid. 332. This was founded on the maxim of the ancient Germans, "suscipere tam inimicitias seu patris, seu propinqui, quam amicitias, necesse est"; a maxim natural to all rude nations, among which the form of society, and political union, strengthen such a sentiment. This obligation was enforced by legal authority. If a person refused to take part in the quarrel

of his kinsman, and to aid him against his adversary, he was deemed to have renounced all the rights and privileges of kindredship, and became incapable of succeeding to any of his relations, or of deriving any benefit from any civil right or property belonging to them. Du Cange, Dissert. p. 333. The method of ascertaining the degree of affinity which obliged a person to take part in the quarrel of a kinsman was curious. While the Church prohibited the marriage of persons within the seventh degree of affinity, the vengeance of private war extended as far as this absurd prohibition, and all who had such a remote connection with any of the principals were involved in the calamities of war. But when the Church relaxed somewhat of its rigor, and did not extend its prohibition of marrying beyond the fourth degree of affinity, the same restriction took place in the conduct of private war. Beauman. 303. Du Cange, Dissert. 333. — 7. A private war could not be carried on between two full brothers, because both have the same common kindred, and consequently neither had any persons bound to stand by him against the other in the contest; but two brothers of the half-blood might wage war, because each of them has a distinct kindred. Beauman. p. 299. — 8. The vassals of each principal in any private war were involved in the contest, because, by the feudal maxims, they were bound to take arms in defence of the chieftain of whom they held, and to assist him in every quarrel. As soon, therefore, as feudal tenures were introduced, and this artificial connection was established between vassals and the baron of whom they held, vassals came to be considered as in the same state with relations. Beauman. 303. — 9. Private wars were very frequent for several centuries. Nothing contributed more to increase those disorders in government, or to encourage such ferocity of manners, as reduced the

nations of Europe to that wretched state which distinguished the period of history which I am reviewing. Nothing was such an obstacle to the introduction of a regular administration of justice. Nothing could more effectually discourage industry or retard the progress and cultivation of the arts of peace. Private wars were carried on with all the destructive rage which is to be dreaded from violent resentment, when armed with force and authorized by law. It appears from the statutes prohibiting or restraining the exercise of private hostilities, that the invasion of the most barbarous enemy could not be more desolating to a country, or more fatal to its inhabitants, than those intestine wars. Ordon. tom. i. p. 701, tom. ii. pp. 395, 408, 507, &c. The contemporary historians describe the excesses committed in prosecution of these quarrels in such terms as excite astonishment and horror. I shall mention only one passage from the History of the Holy War, by Guibert, abbot of Nogent: "Erat eo tempore, maximis ad invicem hostilitatibus, totius Francorum regni facta turbatio; crebra ubique latrocinia, viarum obsessio; audiebantur passim, immo fiebant incendia infinita; nullis præter sola et indomita cupiditate existentibus causis, extruebantur prælia; et ut brevi totum claudam, quicquid obtutibus cupidorum subjacebat, nusquam attendendo cujus esset, prædæ patebat." Gesta Dei per Francos, vol. i. p. 482.

Having thus collected the chief regulations which custom had established concerning the right and exercise of private war, I shall enumerate, in chronological order, the various expedients employed to abolish or restrain this fatal custom. 1. The first expedient employed by the civil magistrate, in order to set some bounds to the violence of private revenge, was the fixing by law the fine or composition to be paid for each different crime The

injured person was originally the sole judge concerning the nature of the wrong which he had suffered, the degree of vengeance which he should exact, as well as the species of atonement or reparation with which he might rest satisfied. Resentment became, of course, as implacable as it was fierce. It was often a point of honor not to forgive, nor to be reconciled. This made it necessary to fix those compositions which make so great a figure in the laws of barbarous nations. The nature of crimes and offences was estimated by the magistrate, and the sum due to the person offended was ascertained with a minute, and often a whimsical accuracy. Rotharis, the legislator of the Lombards, who reigned about the middle of the seventh century, discovers his intention, both in ascertaining the composition to be paid by the offender, and in increasing its value; it is, says he, that the enmity may be extinguished, the prosecution may cease, and peace may be restored. Leg. Longob. lib. i. tit. 7, § 10. —2. About the beginning of the ninth century, Charlemagne struck at the root of the evil, and enacted, "That when any person had been guilty of a crime, or had committed an outrage, he should immediately submit to the penance which the Church imposed, and offer to pay the composition which the law prescribed; and if the injured person or his kindred should refuse to accept of this, and presume to avenge themselves by force of arms, their lands and properties should be forfeited." Capitul. A. D. 802, edit. Baluz. vol. i. p. 371. —3. But in this, as well as in other regulations, the genius of Charlemagne advanced before the spirit of his age. The ideas of his contemporaries concerning regular government were too imperfect, and their manners too fierce, to submit to this law. Private wars, with all the calamities which they occasioned, became more frequent than ever after the death of that great monarch. His successors were un-

able to restrain them. The Church found it necessary to interpose. The most early of these interpositions now extant is towards the end of the tenth century. In the year 990, several bishops in the South of France assembled, and published various regulations, in order to set some bounds to the violence and frequency of private wars; if any person within their dioceses should venture to transgress, they ordained that he should be excluded from all Christian privileges during his life, and be denied Christian burial after his death. Du Mont, Corps Diplomatique, tom. i. p. 41. These, however, were only partial remedies; and, therefore, a council was held at Limoges, A. D. 994. The bodies of the saints, according to the custom of those ages, were carried thither; and by these sacred relics men were exhorted to lay down their arms, to extinguish their animosities, and to swear that they would not, for the future, violate the public peace by their private hostilities. Bouquet, Recueil des Histor. vol. x. pp. 49, 147. Several other councils issued decrees to the same effect. Du Cange, Dissert. 343.—4. But the authority of councils, how venerable soever in those ages, was not sufficient to abolish a custom which flattered the pride of the nobles, and gratified their favorite passions. The evil grew so intolerable, that it became necessary to employ supernatural means for suppressing it. A bishop of Aquitaine, A. D. 1032, pretended that an angel had appeared to him, and brought him a writing from Heaven, enjoining men to cease from their hostilities, and to be reconciled to each other. It was during a season of public calamity that he published this revelation. The minds of men were disposed to receive pious impressions, and willing to perform anything in order to avert the wrath of Heaven. A general peace and cessation from hostilities took place, and continued for seven years; and a resolution was formed that no man should

in times to come, attack or molest his adversaries during the seasons set apart for celebrating the great festivals of the Church, or from the evening of Thursday in each week to the morning of Monday in the week ensuing, the intervening days being considered particularly holy, our Lord's passion having happened on one of these days, and his resurrection on another. A change in the dispositions of men so sudden, and which produced a resolution so unexpected, was considered as miraculous; and the respite from hostilities which followed upon it was called *the truce of God.* Glaber. Rodulphus, Histor. lib. v. ap. Bouquet, vol. x. p. 59. This, from being a regulation or concert in one kingdom, became a general law in Christendom, was confirmed by the authority of several popes, and the violators were subjected to the penalty of excommunication. Corpus Jur. Canon. Decretal. lib. i. tit. 34, c. 1. Du Cange, Glossar. voc. *Treuga.* An act of the council of Toulujes in Rousillon, A. D. 1041, containing all the stipulations required by the truce of God, is published by Dom de Vic et Dom Vaisette, Hist. de Languedoc, tom. ii. Preuves, p. 206. A cessation from hostilities during three complete days in every week allowed such a considerable space for the passions of the antagonists to cool, and for the people to enjoy a respite from the calamities of war, as well as to take measures for their own security, that, if this truce of God had been exactly observed, it must have gone far towards putting an end to private wars. This, however, seems not to have been the case; the nobles, disregarding the truce, prosecuted their quarrels without interruption as formerly. "Qua nimirum tempestate, universæ provinciæ adeo devastationis continuæ importunitate inquietantur, ut ne ipsa, pro observatione divinæ pacis, professa sacramenta custodiantur." Abbas Uspurgensis, apud Datt. de Pace Imperii Publica, p. 13, No. 35. The violent

spirit of the nobility could not be restrained by any engagements. The complaints of this were frequent; and bishops, in order to compel them to renew their vows and promises of ceasing from their private wars, were obliged to enjoin their clergy to suspend the performance of divine service and the exercise of any religious function within the parishes of such as were refractory and obstinate. Hist. de Langued. par D. D. de Vic et Vaisette, tom. ii. Preuves, p. 118. — 5. The people, eager to obtain relief from their sufferings, called in a second time revelation to their aid. Towards the end of the twelfth century, a carpenter in Guienne gave out, that Jesus Christ, together with the blessed Virgin, had appeared to him, and, having commanded him to exhort mankind to peace, had given him, as a proof of his mission, an image of the Virgin holding her Son in her arms, with this inscription, *Lamb of God, who takest away the sins of the world, give us peace.* This low fanatic addressed himself to an ignorant age, prone to credit what was marvellous. He was received as an inspired messenger of God. Many prelates and barons assembled at Puy, and took an oath, not only to make peace with all their enemies, but to attack such as refused to lay down their arms and to be reconciled to their enemies. They formed an association for this purpose, and assumed the honorable name of *the brotherhood of God.* Robertus de Monte Michaele, ap. M. de Laurière Préf. tom. i. Ordon. p. 29. But the influence of this superstitious terror or devotion was not of long continuance. — 6. The civil magistrate was obliged to exert his authority in order to check a custom which threatened the dissolution of government. Philip Augustus, as some imagine, or St. Louis, as is more probable, published an ordinance, A. D. 1245, prohibiting any person to commence hostilities against the friends and vassals of his adversary until

forty days after the commission of the crime or offence which gave rise to the quarrel; declaring, that if any man presumed to transgress this statute, he should be considered as guilty of a breach of the public peace, and be tried and punished by the judge ordinary as a traitor. Ordon. tom. i. p. 56. This was called *the royal truce*, and afforded time for the violence of resentment to subside, as well as leisure for the good offices of such as were willing to compose the difference. The happy effects of this regulation seem to have been considerable, if we may judge from the solicitude of succeeding monarchs to enforce it. — 7. In order to restrain the exercise of private war still farther, Philip the Fair, towards the close of the same century, A. D. 1296, published an ordinance commanding all private hostilities to cease, while he was engaged in war against the enemies of the state. Ordon. tom. i. pp. 328, 390. This regulation, which seems to be almost essential to the existence and preservation of society, was often renewed by his successors, and, being enforced by the regal authority, proved a considerable check to the destructive contests of the nobles. Both these regulations, introduced first in France, were adopted by the other nations of Europe. — 8. The evil, however, was so inveterate, that it did not yield to all these remedies. No sooner was public peace established in any kingdom, than the barons renewed their private hostilities. They not only struggled to maintain this pernicious right, but to secure the exercise of it without any restraint. Upon the death of Philip the Fair, the nobles of different provinces in France formed associations, and presented remonstrances to his successor, demanding the repeal of several laws, by which he had abridged the privileges of their order. Among these, the right of private war is always mentioned as one of the most valuable; and they claim that the restraint imposed

by the truce of God, the royal truce, as well as that arising from the ordinance of the year 1296, should be taken off. In some instances, the two sons of Philip, who mounted the throne successively, eluded their demands; in others, they were obliged to make concessions. Ordon. tom. i. pp. 551, 557, 561, 573. The ordinances to which I here refer are of such length that I cannot insert them; but they are extremely curious, and may be peculiarly instructive to an English reader, as they throw considerable light on that period of English history in which the attempts to circumscribe the regal prerogative were carried on, not by the people struggling for liberty, but by the nobles contending for power. It is not necessary to produce any evidence of the continuance and frequency of private wars under the successors of Philip the Fair. —9. A practice somewhat similar to the royal truce was introduced, in order to strengthen and extend it. Bonds of assurance, or mutual security, were demanded from the parties at variance, by which they obliged themselves to abstain from all hostilities, either during a time mentioned in the bond, or for ever, and became subject to heavy penalties if they violated this obligation. These bonds were sometimes granted voluntarily, but more frequently exacted by the authority of the civil magistrate. Upon a petition from the party who felt himself weakest, the magistrate summoned his adversary to appear in court, and obliged him to give him a bond of assurance. If, after that, he committed any further hostilities, he became subject to all the penalties of treason. This restraint on private war was known in the age of St. Louis. Establissements, liv. i. c. 28. It was frequent in Bretagne; and, what is very remarkable, such bonds of assurance were given mutually between vassals and the lord of whom they held. Oliver de Clisson grants one to the duke of Bretagne, his sovereign. Morice, Mém.

pour servir de Preuves à l'Hist. de Bret. tom. i. p. 846; ii. p. 371. Many examples of bonds of assurance in other provinces of France are collected by Brussel, tom. ii. p. 856. The nobles of Burgundy remonstrated against this practice, and obtained exemption from it as an encroachment on the privileges of their order. Ordon. tom. i. p. 558. This mode of security was first introduced into cities, and, the good effects of it having been felt there, was extended to the nobles. See Note XVI. — 10. The calamities occasioned by private wars became at some times so intolerable, that the nobles entered into voluntary associations, binding themselves to refer all matters in dispute, whether concerning civil property or points of honor, to the determination of the majority of the associates. Morice, Mém. pour servir de Preuves à l'Hist. de Bret. tom. ii. p. 728. — 11. But all these expedients proving ineffectual, Charles VI., A. D. 1413, issued an ordinance expressly prohibiting private wars on any pretext whatsoever, with power to the judge ordinary to compel all persons to comply with this injunction, and to punish such as should prove refractory or disobedient, by imprisoning their persons, seizing their goods, and appointing the officers of justice, *manageurs et gasteurs*, to live at free quarters on their estate. If those who were disobedient to this edict could not be personally arrested, he appointed their friends and vassals to be seized, and detained until they gave surety for keeping the peace; and he abolished all laws, customs, or privileges, which might be pleaded in opposition to this ordinance. Ordon. tom. x. p. 138. How slow is the progress of reason and of civil order! Regulations which to us appear so equitable, obvious, and simple, required the efforts of civil and ecclesiastical authority, during several centuries, to introduce and establish them. Even posterior to this period, Louis XI. was obliged to abolish

private wars in Dauphiné, by a particular edict, A. D. 1451. Du Cange, Dissert. p. 348.

This note would swell to a disproportionate bulk, if I should attempt to inquire with the same minute attention into the progress of this pernicious custom in the other countries of Europe. In England the ideas of the Saxons concerning personal revenge, the right of private wars, and the composition due to the party offended, seem to have been much the same with those which prevailed on the Continent. The law of Ina *de vindicantibus*, in the eighth century, Lamb. p. 3; those of Edmund in the tenth century, *de homicidio*, Lamb. p. 72, and *de inimicitiis*, p. 76; and those of Edward the Confessor, in the eleventh century, *de temporibus et diebus pacis*, or Treuga Dei, Lamb. p. 126, are perfectly similar to the *ordonnances* of the French kings, their contemporaries. The laws of Edward, *de pace regis*, are still more explicit than those of the French monarchs, and, by several provisions in them, discover that a more perfect police was established in England at that period. Lombard, p. 128, fol. vers. Even after the Conquest, private wars, and the regulations for preventing them, were not altogether unknown, as appears from Madox, Formulare Anglicanum, No. CXLV., and from the extracts from Domesday Book, published by Gale, Scriptores Hist. Britan. pp. 759, 777. The well-known clause in the form of an English indictment, which, as an aggravation of the criminal's guilt, mentions his having assaulted a person who was in the peace of God and of the king, seems to be borrowed from the Treuga or Pax Dei, and the Pax Regis, which I have explained. But after the Conquest, the mention of private wars among the nobility occurs more rarely in the English history than in that of any other European nation, and no laws concerning them are to be found in the body of their statutes.

Such a change in their own manners, and such a variation from those of their neighbors, is remarkable. Is it to be ascribed to the extraordinary power that William the Norman acquired by right of conquest, and transmitted to his successors, which rendered the execution of justice more vigorous and decisive, and the jurisdiction of the king's court more extensive, than under the monarchs on the Continent? Or was it owing to the settlement of the Normans in England, who, having never adopted the practice of private war in their own country, abolished it in the kingdom which they conquered? It is asserted in an ordinance of John, king of France, that in all times past persons of every rank in Normandy have been prohibited to wage private war, and the practice has been deemed unlawful. Ordon. tom. ii. p. 407. If this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But as there are some English acts of parliament, which, according to the remark of the learned author of the *Observations on the Statutes, chiefly the more ancient*, recite falsehoods, it may be added, that this is not peculiar to the laws of that country. Notwithstanding the positive assertion contained in this public law of France, there is good reason for considering it as a statute which recites a falsehood. This, however, is not the place for discussing that point. It is an inquiry not unworthy the curiosity of an English antiquary.

In Castile, the pernicious practice of private war prevailed, and was authorized by the customs and law of the kingdom. Leges Tauri, tit. 76, cum commentario Anton. Gomezii, p. 551. As the Castilian nobles were no less turbulent than powerful, their quarrels and hostilities involved their country in many calamities. Innumerable proofs of this occur in Mariana. In Aragon the right of private revenge was likewise authorized by law

exercised in its full extent, and accompanied with the same unhappy consequences. Hieron. Blanca, Comment. de Rebus Arag. ap. Schotti Hispan. illustrat. vol. iii. p. 733. Lex Jacobi I. A. D. 1247. Fueros y Observancias del Reyno de Aragon, lib. ix. p. 182. Several confederacies between the kings of Aragon and their nobles, for the restoring of peace, founded on the truce of God, are still extant. Petr. de Marca, *Marca* sive Limes Hispanic. App. 1303, 1388, 1428. As early as the year 1165, we find a combination of the king and court of Aragon, in order to abolish the right of private war, and to punish those who presumed to claim that privilege. Anales de Aragon por Zurita, vol. i. p. 73. But the evil was so inveterate, that, as late as A. D. 1519, Charles V. was obliged to publish a law enforcing all former regulations tending to suppress this practice. Fueros y Observanc. lib. ix. 183, b.

The Lombards, and other Northern nations who settled in Italy, introduced the same maxims concerning the right of revenge into that country, and these were followed by the same effects. As the progress of the evil was perfectly similar to what happened in France, the expedients employed to check its career, or to extirpate it finally, resembled those which I have enumerated. Murat. Ant. Ital. vol. ii. p. 306, &c.

In Germany, the disorders and calamities occasioned by the right of private war were greater and more intolerable than in any other country of Europe. The imperial authority was so much shaken and enfeebled by the violence of the civil wars excited by the contests between the popes and the emperors of the Franconian and Suabian lines, that not only the nobility but the cities acquired almost independent power, and scorned all subordination and obedience to the laws. The frequency of these *faidæ*, or private wars, is often mentioned

in the German annals, and the fatal effects of them are most pathetically described, Datt. de Pace Imper. pub. lib. i. cap. 5, No. 30, et passim. The Germans early adopted the Treuga Dei, which was first established in France. This, however, proved but a temporary and ineffectual remedy. The disorders multiplied so fast, and grew to be so enormous, that they threatened the dissolution of society, and compelled the Germans to have recourse to the only remedy of the evil, namely, an absolute prohibition of private wars. The Emperor William published his edict to this purpose, A. D. 1255, an hundred and sixty years previous to the ordinance of Charles VI. in France. Datt. lib. i. cap. 4, No 20. But neither he nor his successors had authority to secure the observance of it. This gave rise to a practice in Germany, which conveys to us a striking idea both of the intolerable calamities occasioned by private wars, and of the feebleness of government during the twelfth and thirteenth centuries. The cities and nobles entered into alliances and associations, by which they bound themselves to maintain the public peace, and to make war on such as should violate it. This was the origin of the league of the Rhine, of Suabia, and of many smaller confederacies distinguished by various names. The rise, progress, and beneficial effects of these associations are traced by Datt with great accuracy. Whatever degree of public peace or of regular administration was preserved in the empire from the beginning of the twelfth century to the close of the fifteenth, Germany owes to these leagues. During that period, political order, respect for the laws, together with the equal administration of justice, made considerable progress in Germany. But the final and perpetual abolition of the right of private war was not accomplished until A. D. 1495. The imperial authority was by that time more firmly established, the ideas of men with

respect to government and subordination were become more just. That barbarous and pernicious privilege of waging private war, which the nobles had so long possessed, was declared to be incompatible with the happiness and existence of society. In order to terminate any differences which might arise among the various members of the Germanic body, the Imperial Chamber was instituted with supreme jurisdiction, to judge without appeal in every question brought before it. That court has subsisted since that period, forming a very respectable tribunal of essential importance in the German constitution. Datt. lib. iii. iv. v. Pfeffel, Abrégé de l'Histoire du Droit, &c. p. 556.

Note XXII. — Sect. I. p. 65.

It would be tedious and of little use to enumerate the various modes of appealing to the justice of God which superstition introduced during the ages of ignorance. I shall mention only one, because we have an account of it in a placitum, or trial, in the presence of Charlemagne, from which we may learn the imperfect manner in which justice was administered even during his reign. In the year 775, a contest arose between the bishop of Paris and the abbot of St. Denys, concerning the property of a small abbey. Each of them exhibited deeds and records, in order to prove the right to be in them. Instead of trying the authenticity, or considering the import of these, the point was referred to the *judicium crucis*. Each produced a person, who, during the celebration of mass, stood before the cross with his arms expanded; and he whose representative first became weary, and altered his posture, lost the cause. The person employed by the bishop on this occasion had less strength or less spirit than his adversary, and the question was decided in favor

of the abbot. Mabillon de Re Diplomat. lib. vi. p. 498 If a prince so enlightened as Charlemagne countenanced such an absurd mode of decision, it is no wonder that other monarchs should tolerate it so long. M. de Montesquieu has treated of the trial by judicial combat at considerable length. The two talents which distinguish that illustrious author, industry in tracing all the circumstances of ancient and obscure institutions, and sagacity in penetrating into the causes and principles which contributed to establish them, are equally conspicuous in his observations on this subject. To these I refer the reader, as they contain most of the principles by which I have endeavored to explain this practice. De l'Esprit des Loix, liv. xxviii. It seems to be probable, from the remarks of M. de Montesquieu, as well as from the facts produced by Muratori, tom. iii. Dissert. xxxviii., that appeals to the justice of God by the experiments with fire and water, &c. were frequent among the people who settled in the different provinces of the Roman empire, before they had recourse to the judicial combat; and yet the judicial combat seems to have been the most ancient mode of terminating any controversy among the barbarous nations in their original settlements. This is evident from Velleius Paterculus, lib. ii. c. 118, who informs us, that all questions which were decided among the Romans by legal trial, were terminated among the Germans by arms. The same thing appears in the ancient laws and customs of the Swedes, quoted by Jo. O. Stiernhöök de Jure Sueonum et Gothorum vetusto, 4to, Holmiæ, 1682, lib. i. c. 7. It is probable that, when the various tribes which invaded the empire were converted to Christianity, their ancient custom of allowing judicial combats appeared so glaringly repugnant to the precepts of religion, that, for some time, it was abolished, and by degrees several circumstances which I have mentioned led them to resume it.

It seems likewise to be probable, from a law quoted by Stiernhöök in the treatise which I have mentioned, that the judicial combat was originally permitted in order to determine points respecting the personal character or reputation of individuals, and was afterwards extended not only to criminal cases, but to questions concerning property. The words of the law are: "If any man shall say to another these reproachful words, 'You are not a man equal to other men,' or, 'You have not the heart of a man,' and the other shall reply, 'I am a man as good as you,' let them meet on the highway. If he who first gave offence appear, and the person offended absent himself, let the latter be deemed a worse man even than he was called; let him not be admitted to give evidence in judgment either for man or woman, and let him not have the privilege of making a testament. If he who gave the offence be absent, and only the person offended appear, let him call upon the other thrice with a loud voice, and make a mark upon the earth, and then let him who absented himself be deemed infamous, because he uttered words which he durst not support. If both shall appear properly armed, and the person offended shall fall in the combat, let a half compensation be paid for his death. But if the person who gave the offence shall fall, let it be imputed to his own rashness. The petulance of his tongue hath been fatal to him. Let him lie in the field without any compensation being demanded for his death." Lex Uplandica, ap. Stiern. p. 76. Martial people were extremely delicate with respect to everything that affected their reputation as soldiers. By the laws of the Salians, if any man called another a *hare*, or accused him of having left his shield in the field of battle, he was ordained to pay a large fine. Leg. Sal. tit. xxxii. § 4, 6. By the law of the Lombards, if any one called another *arga*, i. e. a good-for-nothing fellow,

he might immediately challenge him to combat. Leg. Longob. lib. i. tit. v. § 1. By the law of the Salians, if one called another *cenitus*, a term of reproach equivalent to *arga*, he was bound to pay a very high fine. Tit. xxxii. § 1. Paulus Diaconus relates the violent impression which this reproachful expression made upon one of his countrymen, and the fatal effects with which it was attended. De Gestis Longobard. liv. vi. c. 34. Thus the ideas concerning the point of honor, which we are apt to consider as a modern refinement, as well as the practice of duelling, to which it gave rise, are derived from the notions of our ancestors, while in a state of society very little improved.

As M. de Montesquieu's view of this subject did not lead him to consider every circumstance relative to judicial combats, I shall mention some particular facts necessary for the illustration of what I have said with respect to them. A remarkable instance occurs of the decision of an abstract point of law by combat. A question arose in the tenth century concerning the *right of representation*, which was not then fixed, though now universally established in every part of Europe. "It was a matter of doubt and dispute," saith the historian, "whether the sons of a son ought to be reckoned among the children of the family, and succeed equally with their uncles, if their father happen to die while their grandfather was alive. An assembly was called to deliberate on this point, and it was the general opinion, that it ought to be remitted to the examination and decision of judges. But the emperor, following a better course, and desirous of dealing honorably with his people and nobles, appointed the matter to be decided by battle between two champions. He who appeared in behalf of the right of children to represent their deceased father was victorious; and it was established, by a perpetual

decree, that they should hereafter share in the inheritance together with their uncles." Wittikindus Corbiensis, lib. Annal. ap. M. de Laurière, Préf. Ordon. vol. i. p. xxxiii. If we can suppose the caprice of folly to lead men to any action more extravagant than this of settling a point in law by combat, it must be that of referring the truth or falsehood of a religious opinion to be decided in the same manner. To the disgrace of human reason, it has been capable even of this extravagance. A question was agitated in Spain in the eleventh century, whether the Musarabic liturgy and ritual which had been used in the churches of Spain, or that approved of by the see of Rome, which differed in many particulars from the other, contained the form of worship most acceptable to the Deity. The Spaniards contended zealously for the ritual of their ancestors. The popes urged them to receive that to which they had given their infallible sanction. A violent contest arose. The nobles proposed to decide the controversy by the sword. The king approved of this method of decision. Two knights in complete armor entered the lists. John Ruys de Matanca, the champion of the Musarabic liturgy, was victorious. But the queen and archbishop of Toledo, who favored the other form, insisted on having the matter submitted to another trial, and had interest enough to prevail in a request, inconsistent with the laws of combat, which being considered as an appeal to God, the decision ought to have been acquiesced in as final. A great fire was kindled. A copy of each liturgy was cast into the flames. It was agreed that the book which stood this proof, and remained untouched, should be received in all the churches of Spain. The Musarabic liturgy triumphed likewise in this trial, and, if we may believe Roderigo de Toledo, remained unhurt by the fire, when the other was reduced to ashes. The queen and arch-

bishop had power or art sufficient to elude this decision also, and the use of the Musarabic form of devotion was permitted only in certain churches. A determination no less extraordinary than the whole transaction. Roder. de Toledo, quoted by P. Orleans, Hist. des Révol. d'Espagne, tom. i. p. 417. Mariana, lib. i. c. 18, vol. i. p. 378. — A remarkable proof of the general use of trial by combat, and of the predilection for that mode of decision, occurs in the laws of the Lombards. It was a custom in the Middle Ages, that any person might signify publicly the law to which he chose to be subjected; and by the prescriptions of that law he was obliged to regulate his transactions, without being bound to comply with any practice authorized by other codes of law. Persons who had subjected themselves to the Roman law, and adhered to the ancient jurisprudence, as far as any knowledge of it was retained in those ages of ignorance, were exempted from paying any regard to the forms of proceedings established by the laws of the Burgundians, Lombards, and other barbarous people. But the Emperor Otho, in direct contradiction to this received maxim, ordained, "That all persons, under whatever law they lived, even although it were the Roman law, should be bound to conform to the edicts concerning the trial by combat." Leg. Longob. lib. ii. tit. 55, § 38. While the trial by judicial combat subsisted, proof by charters, contracts, or other deeds, became ineffectual; and even this species of written evidence, calculated to render the proceedings of courts certain and decisive, was eluded. When a charter or other instrument was produced by one of the parties, his opponent might challenge it, affirm that it was false and forged, and offer to prove this by combat. Leg. Longob. ibid. § 34. It is true, that, among the reasons enumerated by Beaumanoir on account of which judges might refuse to permit a trial

by combat, one is, "If the point in contest can be clearly proved or ascertained by other evidence." Coust. de Beauv. ch. 63, p. 323. But that regulation removed the evil only a single step. For the party who suspected that a witness was about to depose in a manner unfavorable to his cause, might accuse him of being suborned, give him the lie, and challenge him to combat; if the witness was vanquished in battle, no other evidence could be admitted, and the party by whom he was summoned to appear lost his cause. Leg. Baivar. tit. 16, § 2. Leg. Burgund. tit. 45. Beauman. ch. 61, p. 315. The reason given for obliging a witness to accept of a defiance, and to defend himself by combat, is remarkable, and contains the same idea which is still the foundation of what is called the point of honor; "for it is just, that if any one affirms that he perfectly knows the truth of anything, and offers to give oath upon it, that he should not hesitate to maintain the veracity of his affirmation in combat." Leg. Burgund. tit. 45.

That the trial by judicial combat was established in every country of Europe, is a fact well known, and requires no proof. That this mode of decision was frequent, appears not only from the codes of ancient laws which established it, but from the earliest writers concerning the practice of law in the different nations of Europe. They treat of this custom at great length; they enumerate the regulations concerning it with minute accuracy, and explain them with much solicitude. It made a capital and extensive article in jurisprudence. There is not any one subject in their system of law which Beaumanoir, Defontaines, or the compilers of the Assises de Jérusalem, seem to have considered as of greater importance; and none upon which they have bestowed so much attention. The same observation will hold with respect to the early authors of other

nations. It appears from Madox, that trials of this kind were so frequent in England, that fines, paid on these occasions, made no inconsiderable branch of the king's revenue. Hist. of the Excheq. vol. i. p. 349. A very curious account of a judicial combat between Messire Robert de Beaumanoir and Messire Pierre Tournemine, in presence of the duke of Bretagne, A. D. 1385, is published by Morice, Mém. pour servir de Preuves à l'Hist. de Bretagne, tom. ii. p. 498. All the formalities observed in such extraordinary proceedings are there described more minutely than in any ancient monument which I have had an opportunity of considering. Tournemine was accused by Beaumanoir of having murdered his brother. The former was vanquished, but was saved from being hanged upon the spot by the generous intercession of his antagonist. A good account of the origin of the laws concerning judicial combat is published in the History of Pavia, by Bernardo Sacci, lib. ix. c. 8, in Græv. Thes. Antiquit. Ital. vol. iii. p. 743.

This mode of trial was so acceptable, that ecclesiastics, notwithstanding the prohibitions of the Church, were constrained not only to connive at the practice, but to authorize it. A remarkable instance of this is produced by Pasquier, Recherches, lib. iv. ch. i. p. 350. The Abbot Wittikindus, whose words I have produced in this note, considered the determination of a point in law by combat as the best and most honorable mode of decision. In the year 978, a judicial combat was fought in the presence of the emperor. The Archbishop Aldebert advised him to terminate a contest which had arisen between two noblemen of his court by this mode of decision. The vanquished combatant, though a person of high rank, was beheaded on the spot. Chronic. Ditmari, Episc. Mersb. apud Bouquet, Recueil des Hist. tom. x. p. 121. Questions concerning the property of churches and

monasteries were decided by combat. In the year 961 a controversy concerning the church of St. Médard, whether it belonged to the abbey of Beaulieu or not, was terminated by judicial combat. Bouquet, Recueil des Hist. tom. ix. p. 729. Ibid. p. 612, &c. The Emperor Henry I. declares, that this law, authorizing the practice of judicial combats, was enacted with consent and applause of many faithful bishops. Ibid. p. 231. So remarkably did the martial ideas of those ages prevail over the genius and maxims of the canon law, which in other instances was in the highest credit and authority with ecclesiastics. A judicial combat was appointed in Spain, by Charles V., A. D. 1522. The combatants fought in the emperor's presence, and the battle was conducted with all the rites prescribed by the ancient laws of chivalry. The whole transaction is described at great length by Pontus Heuterus, Rer. Austriac. lib. viii. c. 17, p. 205.

The last instance which occurs in the history of France, of a judicial combat authorized by the magistrate, was the famous one between M. Jarnac and M. de la Chaistaignerie, A. D. 1547. A trial by combat was appointed in England, A. D. 1571, under the inspection of the judges in the Court of Common Pleas; and though it was not carried to the same extremity with the former, Queen Elizabeth having interposed her authority, and enjoined the parties to compound the matter, yet, in order to preserve their honor, the lists were marked out, and all the forms previous to the combat were observed with much ceremony. Spelm. Gloss. voc. *Campus*, p. 103. In the year 1631, a judicial combat was appointed between Donald Lord Rea and David Ramsay, Esq. by the authority of the lord high constable and earl marshal of England; but that quarrel likewise terminated without bloodshed, being accommodated by Charles I. Another instance occurs seven years later. Rushworth, in Observations on the Statutes, &c. p. 266.

Note XXIII. — Sect. I. p. 72.

The text contains the great outlines which mark the course of private and public jurisdiction in the several nations of Europe. I shall here follow more minutely the various steps of this progress, as the matter is curious and important enough to merit this attention. The payment of a fine by way of satisfaction to the person or family injured was the first device of a rude people, in order to check the career of private resentment, and to extinguish those *faidæ*, or deadly feuds, which were prosecuted among them with the utmost violence. This custom may be traced back to the ancient Germans, Tacit. de Morib. Germ. c. 21, and prevailed among other uncivilized nations. Many examples of this are collected by the ingenious and learned author of Historical Law Tracts, vol. i. p. 41. These fines were ascertained and levied in three different manners. At first they were settled by voluntary agreement between the parties at variance. When their rage began to subside, and they felt the bad effects of their continuing in enmity, they came to terms of concord, and the satisfaction made was called a *composition*, implying that it was fixed by mutual consent. De l'Esprit des Loix, liv. xxx. c. 19. It is apparent from some of the more ancient codes of laws, that at the time when these were compiled matters still remained in that simple state. In certain cases, the person who had committed an offence was left exposed to the resentment of those whom he had injured, until he should recover their favor, "quoquo modo potuerit." Leg. Frision. tit. 11, § 1. The next mode of levying these fines was by the sentence of arbiters. An arbiter is called in the Regiam Majestatem *amicabilis compositor*, lib. xi. c. 4, § 10. He could estimate the degree of offence with more impartiality than the parties inte-

ested, and determine with greater equity what satisfaction ought to be demanded. It is difficult to bring an authentic proof of a custom previous to the records preserved in any nation of Europe. But one of the Formulæ Andegavenses compiled in the sixth century seems to allude to a transaction carried on, not by the authority of a judge, but by the mediation of arbiters chosen by mutual consent. Bouquet, Recueil des Histor. tom. iv. p. 566. But as an arbiter wanted authority to enforce his decisions, judges were appointed with compulsive power to oblige both parties to acquiesce in their decisions. Previous to this last step, the expedient of paying compositions was an imperfect remedy against the pernicious effects of private resentment. As soon as this important change was introduced, the magistrate, putting himself in place of the person injured, ascertained the composition with which he ought to rest satisfied. Every possible injury that could occur in the intercourse of civil society was considered, and estimated, and the compositions due to the person aggrieved were fixed with such minute attention as discovers, in most cases, amazing discernment and delicacy, in some instances unaccountable caprice. Besides the composition payable to the private party, a certain sum, called a *fredum*, was paid to the king or state, as Tacitus expresses it, or to the *fiscus*, in the language of the barbarous laws. Some authors, blending the refined ideas of modern policy with their reasonings concerning ancient transactions, have imagined that the *fredum* was a compensation due to the community on account of the violation of the public peace. But it is manifestly nothing more than the price paid to the magistrate for the protection which he afforded against the violence of resentment. The enacting of this was a considerable step towards improvement in criminal jurisprudence. In some of the more

ancient codes of laws, the *freda* are altogether omitted, or so seldom mentioned, that it is evident they were but little known. In the later codes, the *fredum* is as precisely specified as the composition. In common cases, it was equal to the third part of the composition. Capitul. vol. i. p. 52. In some extraordinary cases, where it was more difficult to protect the person who had committed violence, the *fredum* was augmented. Capitul. vol. i. p. 515. These *freda* made a considerable branch in the revenues of the barons; and in whatever district territorial jurisdiction was granted, the royal judges were prohibited from levying any *freda*. In explaining the nature of the *fredum*, I have followed, in a great measure, the opinion of M. de Montesquieu, though I know that several learned antiquaries have taken the word in a different sense. De l'Esprit des Loix, liv. xxx. c. 20, &c. The great object of judges was to compel the one party to give, and the other to accept, the satisfaction prescribed. They multiplied regulations to this purpose, and enforced them by grievous penalties. Leg. Longob. lib. i. tit. 9, § 34. Ibid. tit. 37, § 1, 2. Capitul. vol. i. p. 371, § 22. The person who received a composition was obliged to cease from all further hostility, and to confirm his reconciliation with the adverse party by an oath. Leg. Longob. lib. i. tit. 9, § 8. As an additional and more permanent evidence of reconciliation, he was required to grant a bond of security to the person from whom he received a composition, absolving him from all further prosecution. Marculfus, and the other collectors of ancient writs, have preserved several different forms of such bonds. Marc. lib. xi. § 18. Append. § 23. Form. Sirmondicæ, § 39. The *letters of Slanes*, known in the law of Scotland, are perfectly similar to these bonds of security. By the letters of Slanes, the heirs and relations of a person

who had been murdered bound themselves, in consideration of an *assythment*, or composition paid to them, to forgive, "pass over, and for ever forget, and in oblivion inter, all rancor, malice, revenge, prejudice, grudge, and resentment, that they have or may conceive against the aggressor or his posterity, for the crime which he had committed, and discharge him of all action, civil or criminal, against him or his estate, for now and ever." System of Stiles by Dallas of St. Martin's, p. 862. In the ancient form of letters of Slanes, the private party not only forgives and forgets, but pardons and grants remission of the crime. This practice, Dallas, reasoning according to the principles of his own age, considers as an encroachment on the rights of sovereignty, as none, says he, could pardon a criminal but the king. Ibid. But in early and rude times, the prosecution, the punishment, and the pardon of criminals were all deeds of the private person who was injured. Madox has published two writs, one in the reign of Edward I., the other in the reign of Edward III., by which private persons grant a release or pardon of all trespasses, felonies, robberies, and murders committed. Formul. Anglican. No. 702, 705. In the last of these instruments, some regard seems to be paid to the rights of the sovereign, for the pardon is granted *en quant que en nous est.* Even after the authority of the magistrate was interposed in punishing crimes, the punishment of criminals is long considered chiefly as a gratification to the resentment of the persons who have been injured. In Persia a murderer is still delivered to the relations of the person whom he has slain, who put him to death with their own hands. If they refuse to accept of a sum of money as a compensation, the sovereign, absolute as he is, cannot pardon the murderer. Voyages de Chardin, iii. p. 417, edit. 1735, 4to. Voyages de Tavernier, liv. v. c. 5, 10. Among the Ara-

bians, though one of the first polished people in the East, the same custom still subsists. Description de l'Arabie par M. Niebuhr, p. 28. By a law in the kingdom of Aragon as late as the year 1564, the punishment of one condemned to death cannot be mitigated but by consent of the parties who have been injured. Fueros y Observancias del Reyno de Aragon, p. 204, 6.

If, after all the engagements to cease from enmity which I have mentioned, any person renewed hostilities, and was guilty of any violence, either towards the person from whom he had received a composition, or towards his relations and heirs, this was deemed a most heinous crime, and punished with extraordinary rigor. It was an act of direct rebellion against the authority of the magistrate, and was repressed by the interposition of all his power. Leg. Longob. lib. i. tit. 9, § 8, p. 34. Capit. vol. i. p. 371, § 22. Thus the avenging of injuries was taken out of private hands, a legal composition was established, and peace and amity were restored under the inspection and by the authority of a judge. It is evident, that, at the time when the barbarians settled in the provinces of the Roman empire, they had fixed judges established among them with compulsive authority. Persons vested with this character are mentioned by the earliest historians. Du Cange, voc. *Judices.* The right of territorial jurisdiction was not altogether an usurpation of the feudal barons, or an invasion of the prerogative of the sovereign. There is good reason to believe, that the powerful leaders, who seized different districts of the countries which they conquered, and kept possession of them as *allodial* property, assumed from the beginning the right of jurisdiction, and exercised it within their own territories. This jurisdiction was supreme, and extended to all causes. The clearest proofs of this are produced by M. Bouquet, Le Droit Publique de France éclairci, &c. tom. i. p. 206,

&c. The privilege of judging his own vassals appears to have been originally a right inherent in every baron who held a fief. As far back as the archives of nations can conduct us with any certainty, we find the jurisdiction and fief united. One of the earliest charters to a layman which I have met with is that of Ludovicus Pius, A. D. 814; and it contains the right of territorial jurisdiction in the most express and extensive terms. Capitul. vol. ii. p. 1405. There are many charters to churches and monasteries of a more early date, containing grants of similar jurisdiction, and prohibiting any royal judge to enter the territories of those churches or monasteries, or to perform any act of judicial authority there. Bouquet, Recueil des Hist. tom. iv. pp. 628, 631, 633; tom. v. pp. 703, 710, 752, 762. Muratori has published many very ancient charters containing the same immunities. Antiq. Ital. Dissert. lxx. In most of these deeds, the royal judge is prohibited from exacting the *freda* due to the possessor of territorial jurisdiction, which shows that they constituted a valuable part of the revenue of each superior lord at that juncture. The expense of obtaining a sentence in a court of justice during the Middle Ages was so considerable, that this circumstance alone was sufficient to render men unwilling to decide any contest in judicial form. It appears from a charter in the thirteenth century, that the baron who had the right of justice received the fifth part of the value of every subject, the property of which was tried and determined in his court. If, after the commencement of a lawsuit, the parties terminated the contest in an amicable manner, or by arbitration, they were nevertheless bound to pay the fifth part of the subject contested to the court before which the suit had been brought. Hist. de Dauphiné, Genève, 1722, tom. i. p. 22. Similar to this is a regulation in the charter of liberty granted to the town of

Friburg, A. D. 1120. If two of the citizens shall quarrel, and if one of them shall complain to the superior lord or to his judge, and after commencing the suit shall be privately reconciled to his adversary, the judge, if he does not approve of this reconciliation, may compel him to go on with his lawsuit, and all who were present at the reconciliation shall forfeit the favor of the superior lord. Historia Zaringo-Badensis. Auctor. Jo. Dan. Schoepflinus. Carolsr. 1765, 4to, vol. v. p. 55.

What was the extent of that jurisdiction which those who held fiefs possessed originally, we cannot now determine with certainty. It is evident that, during the disorders which prevailed in every kingdom of Europe, the great vassals took advantage of the feebleness of their monarchs, and enlarged their jurisdictions to the utmost. As early as the tenth century, the more powerful barons had usurped the right of deciding all causes, whether civil or criminal. They had acquired the *high justice* as well as the *low*. Establ. de St. Louis, liv. i. c. 24, 25. Their sentences were final, and there lay no appeal from them to any superior court. Several striking instances of this are collected by Brussel. Traité des Fiefs, liv. iii. c. 11, 12, 13. Not satisfied with this, the more potent barons got their territories created into *regalities*, with almost every royal prerogative and jurisdiction. Instances of these were frequent in France. Bruss. ibid. In Scotland, where the power of the feudal nobles became exorbitant, they were very numerous. Historical Law Tracts, vol. i. tract vi. Even in England, though the authority of the Norman kings circumscribed the jurisdiction of the barons within more narrow limits than in any other feudal kingdom, several counties palatine were erected, into which the king's judges could not enter, and no writ could come in the king's name until it received the seal of the county palatine. Spelman, Gloss. voc.

Comites Palatini; Blackstone's Commentaries on the Laws of England, vol. iii. p. 78. These lords of regalities had a right to claim or rescue their vassals from the king's judges, if they assumed any jurisdiction over them. Brussel, ubi supra. In the law of Scotland, this privilege was termed the right of *repledging;* and the frequency of it not only interrupted the course of justice, but gave rise to great disorders in the exercise of it. Hist. Law Tracts, ibid. The jurisdiction of the counties palatine seems to have been productive of like inconveniences in England.

The remedies provided by princes against the bad effects of these usurpations of the nobles, or inconsiderate grants of the crown, were various, and gradually applied. Under Charlemagne and his immediate descendants, the regal prerogative still retained great vigor, and the *duces*, *comites*, and *missi dominici*, the former of whom were ordinary and fixed judges, the latter extraordinary and itinerant judges, in the different provinces of their extensive dominions, exercised a jurisdiction coordinate with the barons in some cases, and superior to them in others. Du Cange, voc. *Dux*, *Comites*, *et Missi*. Murat. Antiq. Dissert. viii. et ix. But under the feeble race of monarchs who succeeded them, the authority of the royal judges declined, and the barons acquired that unlimited jurisdiction which has been described. Louis VI. of France attempted to revive the function of the *missi dominici* under the title of *juges des exempts*, but the barons were become too powerful to bear such an encroachment on their jurisdiction, and he was obliged to desist from employing them. Hainault, Abrégé Chron. tom. ii. p. 730. His successor (as has been observed) had recourse to expedients less alarming. The appeal *de défaute de droit*, or on account of the refusal of justice, was the first which was attended with any considerable effect. According to the maxims of feudal law, if a

baron had not as many vassals as enabled him to try by their peers the parties who offered to plead in his court, or if he delayed or refused to proceed in the trial, the cause might be carried, by appeal, to the court of the superior lord of whom the baron held, and tried there. De l'Esprit des Loix, liv. xxviii. c. 28. Du Cange, voc. *Defectus Justitiæ.* The number of peers or assessors in the courts of barons was frequently very considerable. It appears from a criminal trial in the court of the Viscount de Lautrec, A. D. 1299, that upwards of two hundred persons were present, and assisted in the trial, and voted in passing judgment. Hist. de Langued. par D. D. de Vic et Vaisette, tom. iv. Preuves, p. 114. But as the right of jurisdiction had been usurped by many inconsiderable barons, they were often unable to hold courts. This gave frequent occasion to such appeals, and rendered the practice familiar. By degrees, such appeals began to be made from the courts of the more powerful barons; and it is evident, from a decision recorded by Brussel, that the royal judges were willing to give countenance to any pretext for them. Traité des Fiefs, tom. i. pp. 235, 261. This species of appeal had less effect in abridging the jurisdiction of the nobles than the appeal on account of the injustice of the sentence. When the feudal monarchs were powerful, and their judges possessed extensive authority, such appeals seem to have been frequent. Capitul. vol. i. pp. 175, 180. And they were made in a manner suitable to the rudeness of a simple age. The persons aggrieved resorted to the palace of their sovereign, and with outcries and loud noise called to him for redress. Capitul. lib. iii. c. 59. Chronic. Lawterbergiense, ap. Mencken. Script. German. vol. ii. p. 284, b. In the kingdom of Aragon, the appeals to the *justiza*, or supreme judge, were taken in such a form as supposed the appellant to be in immediate danger of death, or of some

violent outrage; he rushed into the presence of the judge, crying with a loud voice, *Avi*, *Avi*, *Fuerza*, *Fuerza*, thus imploring (as it were) the instant interposition of that supreme judge in order to save him. Hier. Blanca, Comment. de Rebus Aragon. ap. Script. Hispanic. Pistorii, vol. iii. p. 753. The abolition of the trial by combat facilitated the revival of appeals of this kind. The effects of the subordination which appeals established, in introducing attention, equity, and consistency of decision into courts of judicature, were soon conspicuous; and almost all causes of importance were carried to be finally determined in the king's courts. Brussel, tom. i. p. 252. Various circumstances which contributed towards the introduction and frequency of such appeals are enumerated De l'Esprit des Loix, liv. xxviii. c. 27. Nothing, however, was of such effect as the attention which monarchs gave to the constitution and dignity of their courts of justice. It was the ancient custom for the feudal monarchs to preside themselves in their courts, and to administer justice in person. Marculf. lib. i. § 25. Murat. Dissert. xxxi. Charlemagne, whilst he was dressing, used to call parties into his presence, and, having heard and considered the subject of litigation, gave judgment concerning it. Eginhartus, Vita Caroli Magni, cited by Madox, Hist. of Exchequer, vol. i. p. 91. This trial and decision of causes by the sovereigns themselves could not fail of rendering their courts respectable. St. Louis, who encouraged to the utmost the practice of appeals, revived this ancient custom, and administered justice in person with all the ancient simplicity. "I have often seen the saint," says Joinville, "sit under the shade of an oak in the wood of Vincennes, when all who had any complaint freely approached him. At other times he gave orders to spread a carpet in a garden, and, seating himself upon it, heard the causes that were brought before him." Hist. de St.

Louis, p. 13, edit. 1761. Princes of inferior rank, who possessed the right of justice, sometimes dispensed it in person, and presided in their tribunals. Two instances of this occur with respect to the dauphins of Vienne. Hist. de Dauphiné, tom. i. p. 18, tom. ii. p. 257. But as kings and princes could not decide every cause in person, nor bring them all to be determined in the same court, they appointed *baillis*, with a right of jurisdiction, in different districts of their kingdom. These possessed powers somewhat similar to those of the ancient *comites*. It was towards the end of the twelfth century and beginning of the thirteenth that this office was first instituted in France. Brussel, liv. ii. c. 35. When the king had a court established in different quarters of his dominions, this invited his subjects to have recourse to it. It was the private interest of the *baillis*, as well as an object of public policy, to extend their jurisdiction. They took advantage of every defect in the rights of the barons, and of every error in their proceedings, to remove causes out of their courts, and to bring them under their own cognizance. There was a distinction in the feudal law, and an extremely ancient one, between the high justice and the low. Capitul. 3, A. D. 812, § 4; A. D. 815, § 3. Establ. de St. Louis, liv. i. c. 40. Many barons possessed the latter jurisdiction who had no title to the former. The former included the right of trying crimes of every kind, even the highest; the latter was confined to petty trespasses. This furnished endless pretexts for obstructing, restraining, and reviewing the proceedings in the baron courts. Ordon. ii. 457, § 25; 458, § 29. — A regulation of greater importance succeeded the institution of *baillis*. The king's supreme court or parliament was rendered fixed as to the place, and constant as to the time of its meetings. In France, as well as in the other feudal kingdoms, the king's court of justice was originally am-

bulatory, followed the person of the monarch, and was held only during some of the great festivals. Philip Augustus, A. D. 1305, rendered it stationary at Paris, and continued its terms during the greater part of the year. Pasquier, Recherches, liv. ii. c. 2 et 3, &c. Ordon. tom. i. p. 366, § 62. He and his successors vested extensive powers in that court; they granted the members of it several privileges and distinctions which it would be tedious to enumerate. Pasquier, ibid. Velly, Hist. de France, tom. vii. p. 307. Persons eminent for integrity and skill in law were appointed judges there. Ibid. By degrees the final decision of all causes of importance was brought into the parliament of Paris, and the other parliaments which administered justice in the king's name, in different provinces of the kingdom. This jurisdiction, however, the parliament of Paris acquired very slowly, and the great vassals of the crown made violent efforts in order to obstruct the attempts of that parliament to extend its authority. Towards the close of the thirteenth century, Philip the Fair was obliged to prohibit his parliament from taking cognizance of certain appeals brought into it from the courts of the count of Bretagne, and to recognize and respect his right of supreme and final jurisdiction. Mémoires pour servir de Preuves à l'Histoire de Bretagne, par Morice, tom. i. pp. 1037, 1074. Charles VI., at the end of the following century, was obliged to confirm the rights of the dukes of Bretagne in still more ample form. Ibid. tom. ii. pp. 580, 581. So violent was the opposition of the barons to this right of appeal, which they considered as fatal to their privileges and power, that the authors of the *Encyclopédie* have mentioned several instances in which barons put to death or mutilated such persons as ventured to appeal from the sentences pronounced in their courts to the parliament of Paris, tom. xii. Art. *Parlement*. p. 25.

The progress of jurisdiction in the other feudal kingdoms was in a great measure similar to that which we have traced in France. In England the territorial jurisdiction of the barons was both ancient and extensive. Leg. Edw. Conf. No. 5 and 9. After the Norman conquest, it became more strictly feudal; and it is evident, from facts recorded in the English history, as well as from the institution of counties palatine, which I have already mentioned, that the usurpations of the nobles in England were not less bold or extensive than those of their contemporaries on the continent. The same expedients were employed to circumscribe or abolish those dangerous jurisdictions. William the Conqueror established a constant court in the hall of his palace; from which the four courts now intrusted with the administration of justice in England took their rise. Henry II. divided his kingdom into six circuits, and sent itinerant judges to hold their courts in them at stated seasons. Blackstone's Commentaries on the Laws of England, vol. iii. p. 57. Justices of the peace were appointed in every county by subsequent monarchs, to whose jurisdiction the people gradually had recourse in many civil causes. The privileges of the counties palatine were gradually limited; with respect to some points they were abolished; and the administration of justice was brought into the king's courts, or before judges of his appointment. The several steps taken for this purpose are enumerated in Dalrymple's History of Feudal Property, chap. vii.

In Scotland the usurpations of the nobility were more exorbitant than in any other feudal kingdom. The progress of their encroachments, and the methods taken by the crown to limit or abolish their territorial and independent jurisdictions, both which I had occasion to consider and explain in a former work, differed very little

from those of which I have now given the detail. History of Scotland, vol. i. p. 37.

I should perplex myself and my readers in the labyrinth of German jurisprudence, if I were to attempt to delineate the progress of jurisdiction in the empire, with a minute accuracy. It is sufficient to observe, that the authority which the aulic council and imperial chamber now possess took its rise from the same desire of redressing the abuses of territorial jurisdiction, and was acquired in the same manner that the royal courts attained influence in other countries of Europe. All the important facts, with respect to both these particulars, may be found in Phil. Datt. de Pace Publica Imperii, lib. iv. The capital articles are pointed out in Pfeffel, Abrégé de l'Histoire du Droit Publique d'Allemagne, pp. 556, 581; and in Traité du Droit Publique de l'Empire, par M. le Coq. de Villeray. The two last treatises are of great authority, having been composed under the eye of M. Schoepflin of Strasburg, one of the ablest public lawyers in Germany.

NOTE XXIV.— Sect. I. p. 76.

It is not easy to fix with precision the period at which ecclesiastics first began to claim exemption from the civil jurisdiction. It is certain that during the early and purest ages of the Church they pretended to no such immunity. The authority of the civil magistrate extended to all persons and to all causes. This fact has not only been clearly established by Protestant authors, but is admitted by many Roman Catholics of eminence, and particularly by the writers in defence of the liberties of the Gallican Church. There are several original papers published by Muratori, which show that, in the ninth and tenth centuries, causes of the greatest importance

relating to ecclesiastics were still determined by civil judges. Antiq. Ital. vol. v. Dissert. lxx. Proofs of this are produced likewise by M. Houard, Anciennes Lois des François, &c. vol. i. p. 209. Ecclesiastics did not shake off all at once their subjection to civil courts. This privilege, like their other usurpations, was acquired slowly, and step by step. This exemption seems at first to have been merely an act of complaisance, flowing from veneration for their character. Thus from a charter of Charlemagne in favor of the church of Mans, A. D. 796, to which M. l'Abbé de Foy refers in his Notice de Diplomes, tom. i. p. 201, that monarch directs his judges, if any difference should arise between the administrators of the revenues of that church and any person whatever, not to summon the administrators to appear in "mallo publico"; but, first of all, to meet with them, and to endeavor to accommodate the difference in an amicable manner. This indulgence was in process of time improved into a legal exemption; which was founded on the same superstitious respect of the laity for the clerical character and function. A remarkable instance of this occurs in a charter of Frederic Barbarossa, A. D. 1172, to the monastery of Altenburg. He grants them "judicium non tantum sanguinolentis plagæ, sed vitæ et mortis"; he prohibits any of the royal judges from disturbing their jurisdiction; and the reason which he gives for this ample concession is, "nam quorum, ex Dei gratia, ratione divini ministerii onus leve est, et jugum suave; nos penitus nolumus illos oppressionis contumelia, vel manu laica, fatigari." Mencken, Script. Rer. Germ. vol. iii. p. 1067.

It is not necessary for illustrating what is contained in the text, that I should describe the manner in which the code of the canon law was compiled, or show that the doctrines in it most favorable to the power of the clergy are founded on ignorance, or supported by fraud and

forgery. The reader will find a full account of these in Gerard. van Mastricht, Historia Juris Ecclesiastici, and in Science du Gouvernement, par M. Réal, tom. vii. c. 1, et 3, § 2, 3, &c. The history of the progress and extent of ecclesiastical jurisdiction, with an account of the arts which the clergy employed in order to draw causes of every kind into the spiritual courts, is no less curious, and would throw great light upon many of the customs and institutions of the Dark Ages; but it is likewise foreign from the present subject. Du Cange, in his Glossary, voc. *Curia Christianitatis*, has collected most of the causes with respect to which the clergy arrogated an exclusive jurisdiction, and refers to the authors, or original papers, which confirm his observations. Giannone, in his Civil History of Naples, lib. xix. § 3, has ranged these under proper heads, and scrutinizes the pretensions of the Church with his usual boldness and discernment. M. Fleury observes, that the clergy multiplied the pretexts for extending the authority of the spiritual courts with so much boldness, that it was soon in their power to withdraw almost every person and every cause from the jurisdiction of the civil magistrate. Hist. Ecclés. tom. xix. Disc. Prélim. 16. But how ill founded soever the jurisdiction of the clergy may have been, or whatever might be the abuses to which their manner of exercising it gave rise, the principles and forms of their jurisprudence were far more perfect than that which was known in the civil courts. It seems to be certain, that ecclesiastics never submitted, during any period in the Middle Ages, to the laws contained in the codes of the barbarous nations, but were governed entirely by the Roman law. They regulated all their transactions by such of its maxims as were preserved by tradition, or were contained in the Theodosian Code, and other books extant among them. This we learn from a custom which prevailed

universally in those ages. Every person was permitted to choose, among the various codes of laws then in force, that to which he was willing to conform. In any transaction of importance, it was usual for the persons contracting to mention the law to which they submitted, that it might be known how any controversy that should arise between them was to be decided. Innumerable proofs of this occur in the charters of the Middle Ages. But the clergy considered it as such a valuable privilege of their order to be governed by the Roman law, that, when any person entered into holy orders, it was usual for him to renounce the code of laws to which he had been formerly subject, and to declare that he now submitted to the Roman law. "Constat me Johannem clericum, filium quondam Verandi, qui professus sum, ex natione mea, lege vivere Longobardorum, sed tamen, pro honore ecclesiastico, lege nunc videor vivere Romana." Charta, A. D. 1072. "Farulfus presbyter qui professus sum, more sacerdotii mei, lege vivere Romana." Charta, A. D. 1075. Muratori, Antichita Estensi, vol. i. p. 78. See likewise Houard, Anciennes Loix des François, &c vol. i. p. 203.

The code of the canon law began to be compiled early in the ninth century. Mém. de l'Acad. des Inscript. tom. xviii. p. 346, &c. It was above two centuries after that before any collection was made of those customs which were the rule of judgments in the courts of the barons. Spiritual judges decided, of course, according to written and known laws: lay judges, left without any fixed guide, were directed by loose traditionary customs. But besides this general advantage of the canon law, its forms and principles were more consonant to reason, and more favorable to the equitable decision of every point in controversy, than those which prevailed in lay courts. It appears from Notes XXI. and XXIII. concerning private

wars and the trial by combat, that the whole spirit of ecclesiastical jurisprudence was adverse to those sanguinary customs, which were destructive of justice; and the whole force of ecclesiastical authority was exerted to abolish them, and to substitute trials by law and evidence in their room. Almost all the forms in lay courts which contribute to establish, and continue to preserve, order in judicial proceedings, are borrowed from the canon law. Fleury, Instit. du Droit Canon. part iii. c. 6, p. 52. St. Louis, in his Establissemens, confirms many of his new regulations concerning property and the administration of justice by the authority of the canon law, from which he borrowed them. Thus, for instance, the first hint of attaching movables for the recovery of a debt, was taken from the canon law. Estab. liv. ii. c. 21 et 40. And likewise the *cessio bonorum*, by a person who was insolvent. Ibid. In the same manner, he established new regulations with respect to the effects of persons dying intestate, liv. i. c. 89. These and many other salutary regulations the canonists had borrowed from the Roman law. Many other examples might be produced of more perfect jurisprudence in the canon law than was known in lay courts. For that reason, it was deemed a high privilege to be subject to ecclesiastical jurisdiction. Among the many immunities by which men were allured to engage in the dangerous expeditions for the recovery of the Holy Land, one of the most considerable was the declaring such as took the cross to be subject only to the spiritual courts, and to the rules of decision observed in them. See Note XIII. and Du Cange, voc. *Crucis Privilegia.*

Note XXV. — Sect. I. p. 78.

The rapidity with which the knowledge and study of

the Roman law spread over Europe is amazing. The copy of the Pandects was found at Amalfi, A. D. 1137. Irnerius opened a college of civil law at Bologna a few years after. Giann. Hist. book xi. c. 2. It began to be taught as a part of academical learning in different parts of France before the middle of the century. Vaccarius gave lectures on the civil law at Oxford as early as the year 1147. A regular system of feudal law, formed plainly in imitation of the Roman code, was composed by two Milanese lawyers about the year 1150. Gratian published the code of canon law, with large additions and emendations, about the same time. The earliest collection of those customs, which served as the rules of decision in the courts of justice, is the *Assises de Jérusalem.* They were compiled, as the preamble informs us, in the year 1099, and are called "Jus Consuetudinarium quo regebatur Regnum Orientale." Willerm. Tyr. lib. xix. c. 2. But peculiar circumstances gave occasion to this early compilation. The victorious crusaders settled as a colony in a foreign country, and adventurers from all the different nations of Europe composed this new society. It was necessary on that account to ascertain the laws and customs which were to regulate the transactions of business, and the administration of justice among them. But in no country of Europe was there, at that time, any collection of customs, nor had any attempt been made to render law fixed. The first undertaking of that kind was by Glanville, lord chief justice of England, in his Tractatus de Legibus et Consuetudinibus Angliæ, composed about the year 1181. The Regiam Majestatem in Scotland, ascribed to David I., seems to be an imitation, and a servile one, of Glanville. Several Scottish antiquaries, under the influence of that pious credulity which disposes men to assent, without hesitation, to whatever they deem for the honor

of their native country, contend zealously, that the Regiam Majestatem is a production prior to the treatise of Glanville; and have brought themselves to believe, that a nation in a superior state of improvement borrowed its laws and institutions from one considerably less advanced in its political progress. The internal evidence (were it my province to examine it) by which this theory might be refuted, is, in my opinion, decisive. The external circumstances which have seduced Scottish authors into this mistake have been explained with so much precision and candor by Sir David Dalrymple, in his examination of some of the arguments for the high antiquity of Regiam Majestatem, Edin. 1769, 4to, that it is to be hoped the controversy will not be again revived. Pierre de Fontaines, who tells us that he was the first who had attempted such a work in France, composed his *Conseil*, which contains an account of the customs of the country of Vermandois in the reign of St. Louis, which began A. D. 1226. Beaumanoir, the author of the Coustumes de Beauvoisis, lived about the same time. The Establissemens of St. Louis, containing a large collection of the customs which prevailed within the royal domains, were published by the authority of that monarch. As soon as men became acquainted with the advantages of having written customs and laws, to which they could have recourse on every occasion, the practice of collecting them became common. Charles VII. of France, by an ordinance A. D. 1453, appointed the customary laws in every province of France to be collected and arranged. Velley et Villaret, Histoire, tom. xvi. p. 113.

His successor, Louis XI., renewed the injunction. But this salutary undertaking hath never been fully executed, and the jurisprudence of the French nation remains more obscure and uncertain than it would have been if these

prudent regulations of their monarchs had taken effect. A mode of judicial determination was established in the Middle Ages, which affords the clearest proof that judges, while they had no other rule to direct their decrees but unwritten and traditionary customs, were often at a loss how to find out the facts and principles, according to which they were bound to decide. They were obliged, in dubious cases, to call a certain number of old men, and to lay the case before them, that they might inform them what was the practice or custom with regard to the point. This was called *enqueste par tourbe.* Du Cange, voc. *Turba.* The effects of the revival of the Roman jurisprudence have been explained by M. de Montesquieu, liv. xxviii. c. 42, and by Mr. Hume, Hist. of England, vol. ii. p. 441. I have adopted many of their ideas. Who can pretend to review any subject which such writers have considered, without receiving from them light and information? At the same time, I am convinced that the knowledge of the Roman law was not so entirely lost in Europe during the Middle Ages as is commonly believed. My subject does not require me to examine this point. Many striking facts with regard to it are collected by Donato Antonio d' Asti, Dell' Uso e Autorità della Ragione Civile nelle Provincie dell' Imperio Occidentale. Nap. 1751, 2 vols. 8vo.

That the civil law is intimately connected with the municipal jurisprudence in several countries of Europe, is a fact so well known that it needs no illustration. Even in England, where the common law is supposed to form a system perfectly distinct from the Roman code, and although such as apply in that country to the study of the common law boast of this distinction with some degree of affectation, it is evident that many of the ideas and maxims of the civil law are incorporated into the English jurisprudence. This is well illustrated

by the ingenious and learned author of Observations on the Statutes, chiefly the more Ancient, 3d edit. p. 76, &c.

Note XXVI. — Sect. I. p. 80.

The whole history of the Middle Ages makes it evident that war was the sole profession of gentlemen, and almost the only object attended to in their education. Even after some change in manners began to take place, and the civil arts of life had acquired some reputation, the ancient ideas with respect to the accomplishments necessary for a person of noble birth continued long in force. In the Mémoires de Fleuranges, p. 9, &c. we have an account of the youthful exercises and occupations of Francis I., and they were altogether martial and athletic. That father of letters owed his relish for them, not to education, but to his own good sense and good taste. The manners of the superior order of ecclesiastics during the Middle Ages furnish the strongest proof that, in some instances, the distinction of professions was not completely ascertained in Europe. The functions and character of the clergy are obviously very different from those of laymen; and among the inferior orders of churchmen this constituted a distinct character separate from that of other citizens. But the dignified ecclesiastics, who were frequently of noble birth, were above such a distinction; they retained the idea of what belonged to them as gentlemen, and, in spite of the decrees of popes or the canons of councils, they bore arms, led their vassals to the field, and fought at their head in battle. Among them the priesthood was scarcely a separate profession; the military accomplishments which they thought essential to them as gentlemen were culti vated; the theological science and pacific virtues suitabl to their spiritual function were neglected and despised.

As soon as the science of law became a laborious study, and the practice of it a separate profession, such persons as rose to eminence in it obtained honors which had formerly been appropriated to soldiers. Knighthood was the most illustrious mark of distinction during several ages, and conferred privileges to which rank or birth alone were not entitled. To this high dignity persons eminent for their knowledge of law were advanced, and were thereby placed on a level with those whom their military talents had rendered conspicuous. *Miles justitiæ*, *miles literatus*, became common titles. Matthew Paris mentions such knights as early as A. D. 1251. If a judge attained a certain rank in the courts of justice, that alone gave him a right to the honor of knighthood. Pasquier, Recherches, liv. xi. c. 16, p. 130. Dissertations Historiques sur la Chevalerie par Honoré de Sainte Marie, p. 164, &c. A profession that led to offices which ennobled the persons who held them, grew into credit, and the people of Europe became accustomed to see men rise to eminence by civil as well as military talents.

Note XXVII. — Sect. I. p. 84.

The chief intention of these notes was to bring at once under the view of my readers such facts and circumstances as tend to illustrate or confirm what is contained in that part of the history to which they refer. When these lay scattered in many different authors, and were taken from books not generally known, or which many of my readers might find it disagreeable to consult, I thought it would be of advantage to collect them together. But when everything necessary for the proof or illustration of my narrative or reasoning may be found in any one book which is generally known, or deserves to be so, I shall satisfy myself with referring to it.

This is the case with respect to chivalry. Almost every fact which I have mentioned in the text, together with many other curious and instructive particulars concerning this singular institution, may be found in Mémoires sur l'Ancienne Chevalerie considérée comme une Etablissement Politique et Militaire, par M. de la Curne de St. Palaye.

Note XXVIII.—Sect. I. p. 89.

The subject of my inquiries does not call me to write a history of the progress of science. The facts and observations which I have produced are sufficient to illustrate the effects of its progress upon manners and the state of society. While science was altogether extinct in the western parts of Europe, it was cultivated in Constantinople and other parts of the Grecian empire. But the subtle genius of the Greeks turned almost entirely to theological disputation. The Latins borrowed that spirit from them, and many of the controversies which still occupy and divide theologians took their rise among the Greeks, from whom the other Europeans derived a considerable part of their knowledge. See the testimony of Æneas Silvius, ap. Conringium de Antiq. Academicis, p. 43. Histoire Littéraire de France, tom. vii. p. 113, &c., tom. ix. p. 151, &c. Soon after the empire of the Caliphs was established in the East, some illustrious princes arose among them, who encouraged science. But when the Arabians turned their attention to the literature cultivated by the ancient Greeks and Romans, the chaste and correct taste of their works of genius appeared frigid and unanimated to a people of a more warm imagination. Though they could not admire the poets and historians of Greece or of Rome, they were sensible to the merit of their philosophers. The operations of

the intellect are more fixed and uniform than those of the fancy or taste. Truth makes an impression nearly the same in every place; the ideas of what is beautiful, elegant, or sublime, vary in different climates. The Arabians, though they neglected Homer, translated the most eminent of the Greek philosophers into their own language; and, guided by their precepts and discoveries, applied themselves with great ardor to the study of geometry, astronomy, medicine, dialectics, and metaphysics. In the three former they made considerable and useful improvements, which have contributed not a little to advance those sciences to that high degree of perfection which they have attained. In the two latter they chose Aristotle for their guide, and, refining on the subtle and distinguishing spirit which characterizes his philosophy, they rendered it in a great degree frivolous and unintelligible. The schools established in the East for teaching and cultivating these sciences were in high reputation. They communicated their love of science to their countrymen, who conquered Africa and Spain; and the schools instituted there were little inferior in fame to those in the East. Many of the persons who distinguished themselves by their proficiency in science during the twelfth and thirteenth centuries, were educated among the Arabians. Bruckerus collects many instances of this, Histor. Philos. vol. iii. p. 681, &c. Almost all the men eminent for science during several centuries, if they did not resort in person to the schools in Africa and Spain, were instructed in the philosophy of the Arabians. The first knowledge of the Aristotelian philosophy in the Middle Ages was acquired by translations of Aristotle's works out of the Arabic. The Arabian commentators were deemed the most skilful and authentic guides in the study of his system. Conring. Antiq. Acad. Diss. iii. p. 95, &c. Supplem. p. 241, &c. Murat. Antiquit. Ital.

vol. iii. p. 932, &c. From them the schoolmen derived the genius and principles of their philosophy, which contributed so much to retard the progress of true science.

The establishment of colleges or universities is a remarkable era in literary history. The schools in cathedrals and monasteries confined themselves chiefly to the teaching of grammar. There were only one or two masters employed in that office. But in colleges, professors were appointed to teach all the different parts of science. The course or order of education was fixed. The time that ought to be allotted to the study of each science was ascertained. A regular form of trying the proficiency of students was prescribed; and academical titles and honors were conferred on such as acquitted themselves with approbation. A good account of the origin and nature of these is given by Seb. Bacmeisterus, Antiquitates Rostochienses, sive, Historia Urbis et Academiæ Rostoch. ap. Monumenta inedita Rer. Germ. per E. J. de Westphalen, vol. iii. p. 781, Lips. 1743. The first obscure mention of these academical degrees in the University of Paris (from which the other universities in Europe have borrowed most of their customs and institutions) occurs A. D. 1215. Crevier, Hist. de l'Univ. de Paris, tom. i. p. 296, &c. They were completely established A. D. 1231. Ibid. 248. It is unnecessary to enumerate the several privileges to which bachelors, masters, and doctors were entitled. One circumstance is sufficient to demonstrate the high degree of estimation in which they were held. Doctors in the different faculties contended with knights for precedence, and the dispute was terminated in many instances by advancing the former to the dignity of knighthood, the high prerogatives of which I have mentioned. It was even asserted, that a doctor had a right to that title without creation. Bartolus taught "doctorem actualiter regentem in jure civili

per decennium effici militem ipso facto." Honoré de St. Marie, Dissert. p. 165. This was called "chevalerie de lectures," and the persons advanced to that dignity, "milites clerici." These new establishments for education, together with the extraordinary honors conferred on learned men, greatly increased the number of scholars. In the year 1262, there were ten thousand students in the University of Bologna; and it appears from the history of that university, that law was the only science taught in it at that time. In the year 1340, there were thirty thousand in the University of Oxford. Speed's Chron. ap. Anderson's Chronol. Deduction of Commerce, vol. i. p. 172. In the same century, ten thousand persons voted in a question agitated in the University of Paris; and as graduates alone were admitted to that privilege, the number of students must have been very great. Velley, Hist. de France, tom. xi. p. 147. There were indeed few universities in Europe at that time; but such a number of students may nevertheless be produced as a proof of the extraordinary ardor with which men applied to the study of science in those ages; it shows, likewise, that they already began to consider other professions beside that of a soldier as honorable and useful.

Note XXIX. — Sect. I. p. 91.

The great variety of subjects which I have endeavored to illustrate, and the extent of this upon which I now enter, will justify my adopting the words of M. de Montesquieu, when he begins to treat of commerce. "The subject which follows would require to be discussed more at large; but the nature of this work does not permit it. I wish to glide on a tranquil stream; but I am hurried along by a torrent."

Many proofs occur in history of the little intercourse

between nations during the Middle Ages. Towards the close of the tenth century, Count Bouchard, intending to found a monastery at St. Maur des Fosses, near Paris applied to an abbot of Clugny, in Burgundy, famous for his sanctity, entreating him to conduct the monks thither. The language in which he addressed that holy man is singular; he tells him, that he had undertaken the labor of such a great journey; that he was fatigued with the length of it, therefore hoped to obtain his request, and that his journey into such a distant country should not be in vain. The answer of the abbot is still more extraordinary. He refused to comply with his desire, as it would be extremely fatiguing to go along with him into a strange and unknown region. Vita Burchardi venerabilis Comitis, ap. Bouquet, Rec. des Hist. vol. x. p. 351. Even so late as the beginning of the twelfth century, the monks of Ferrieres, in the diocese of Sens, did not know that there was such a city as Tournay in Flanders; and the monks of St. Martin of Tournay were equally unacquainted with the situation of Ferrieres. A transaction in which they were both concerned made it necessary for them to have some intercourse. The mutual interest of both monasteries prompted each to find out the situation of the other. After a long search, which is particularly described, the discovery was made by accident. Herimannus Abbas, De Restauratione St. Martini Tornacensis ap. Dacher. Spicil. vol. xii. p. 400. The ignorance of the Middle Ages with respect to the situation and geography of remote countries was still more remarkable. The most ancient geographical chart which now remains as a monument of the state of that science in Europe during the Middle Ages, is found in a manuscript of the Chronique de St. Denys. There the three parts of the earth then known are so represented, that Jerusalem is placed in the middle of the globe, and Alexandria appears

to be as near to it as Nazareth. Mém. de l'Acad. des Belles Lettres, tom. xvi. p. 185. There seem to have been no inns or houses of entertainment for the reception of travellers during the Middle Ages. Murat. Antiq. Ital. vol. iii. p. 581, &c. This is a proof of the little intercourse which took place between different nations. Among people whose manners are simple, and who are seldom visited by strangers, hospitality is a virtue of the first rank. This duty of hospitality was so necessary in that state of society which took place during the Middle Ages, that it was not considered as one of those virtues which men may practise or not, according to the temper of their minds and the generosity of their hearts. Hospitality was enforced by statutes, and such as neglected this duty were liable to punishment. "Quicunque hospiti venienti lectum aut focum negaverit, trium solidorum inlatione mulctetur." Leg. Burgund. tit. xxxviii. § 1. "Si quis homini aliquo pergenti in itinere mansionem vetaverit, sexaginta solidos componat in publico." Capitul. lib. vi. § 82. This increase of the penalty, at a period so long after that in which the laws of the Burgundians were published, and when the state of society was much improved, is very remarkable. Other laws of the same purport are collected by Jo. Fred. Polac. Systema Jurisprud. Germanicæ, Lips. 1733, p. 75. The laws of the Slavi were more rigorous than any that he mentions; they ordained that the movables of an inhospitable person should be confiscated, and his house burnt. They were even so solicitous for the entertainment of strangers, that they permitted the landlord to steal for the support of his guest. "Quod noctu furatus fueris, cras appone hospitibus." Rerum Mecleburgicar. lib. viii. a Mat. Jo. Beehr. Lips. 1751, p. 50. In consequence of these laws, or of the state of society which made it proper to enact them, hospitality abounded while

the intercourse among men was inconsiderable, and secured the stranger a kind reception under every roof where he chose to take shelter. This, too, proves clearly that the intercourse among men was rare; for as soon as this became frequent, what was a pleasure became a burden, and the entertaining of travellers was converted into a branch of commerce.

But the laws of the Middle Ages afford a proof still more convincing of the small intercourse between different nations. The genius of the feudal system, as well as the spirit of jealousy which always accompanies ignorance, concurred in discouraging strangers from settling in any new country. If a person removed from one province in a kingdom to another, he was bound within a year and a day to acknowledge himself the vassal of the baron in whose estate he settled; if he neglected to do so, he became liable to a penalty; and if at his death he neglected to leave a certain legacy to the baron within whose territory he had resided, all his goods were confiscated. The hardships imposed on foreigners settling in a country were still more intolerable. In more early times the superior lord of any territory in which a foreigner settled might seize his person, and reduce him to servitude. Very striking instances of this occur in the history of the Middle Ages. The cruel depredations of the Normans in the ninth century obliged many inhabitants of the maritime provinces of France to fly into the interior parts of the kingdom. But instead of being received with that humanity to which their wretched condition entitled them, they were reduced to a state of servitude. Both the civil and ecclesiastical powers found it necessary to interpose, in order to put a stop to this barbarous practice. Potgiesser. de Statu Servor. lib. i. c. 1, § 16. In other countries the laws permitted the inhabitants of the maritime provinces to reduce such as were

shipwrecked on their coast to servitude. Ibid. § 17. This barbarous custom prevailed in many countries of Europe. The practice of seizing the goods of persons who had been shipwrecked, and of confiscating them as the property of the lord on whose manor they were thrown, seems to have been universal. De Westphalen, Monum. inedita Rer. Germ. vol. iv. p. 907, &c., and Du Cange, voc. *Laganum*. Beehr. Rer. Mecleb. lib. viii. p. 512. Among the ancient Welsh three sorts of persons, a madman, a stranger, and a leper, might be killed with impunity. Leges Hoel Dda, quoted in Observat. on the Statutes, chiefly the more Ancient, p. 22. M. de Laurière produces several ancient deeds which prove that in different provinces of France strangers became the slaves of the lord on whose lands they settled. Glossaire du Droit François, art. *Aubaine*, p. 92. Beaumanoir says, "That there are several places in France in which, if a stranger fixes his residence for a year and a day, he becomes the slave of the lord of the manor." Coust. de Beauv. ch. 45, p. 254. As a practice so contrary to humanity could not subsist long, the superior lords found it necessary to rest satisfied, instead of enslaving aliens, with levying certain annual taxes upon them, or imposing upon them some extraordinary duties or services. But when any stranger died, he could not convey his effects by will; and all his real as well as personal estate fell to the king, or to the lord of the barony, to the exclusion of his natural heirs. This is termed in France *droit d'aubaine*. Préf. de Laurière, Ordon. tom. i. p. 15. Brussel, tom. ii. p. 944. Du Cange, voc. *Albani*. Pasquier, Recherches, p. 367. This practice of confiscating the effects of strangers upon their death was very ancient. It is mentioned, though very obscurely, in a law of Charlemagne, A. D. 813, Capitul. Baluz. p. 507, § 5. Not only persons who were born in a foreign country were

subject to the "droit d'aubaine," but in some countries such as removed from one diocese to another, or from the lands of one baron to another. Brussel, vol. ii. pp. 947, 949. It is hardly possible to conceive any law more unfavorable to the intercourse between nations. Something similar to it, however, may be found in the ancient laws of every kingdom in Europe. With respect to Italy, see Murat. Ant. vol. ii. p. 14. As nations advanced in improvement, this practice was gradually abolished. It is no small disgrace to the French jurisprudence, that this barbarous, inhospitable custom should have so long remained among a people so highly civilized.

The confusion and outrage which abounded under a feeble form of government, incapable of framing or executing salutary laws, rendered the communication between the different provinces of the same kingdom extremely dangerous. It appears from a letter of Lupus, abbot of Ferrieres, in the ninth century, that the highways were so much infested by banditti, that it was necessary for travellers to form themselves into companies or caravans, that they might be safe from the assaults of robbers. Bouquet, Recueil des Hist. vol. vii. p. 515. The numerous regulations published by Charles the Bald in the same century discover the frequency of these disorders; and such acts of violence were become so common, that by many they were hardly considered as criminal. For this reason the inferior judges, called "centenarii," were required to take an oath that they would neither commit any robbery themselves, nor protect such as were guilty of that crime. Capitul. edit. Baluz. vol. ii. pp. 63, 68. The historians of the ninth and tenth centuries give pathetic descriptions of these disorders. Some remarkable passages to this purpose are collected by Mat. Jo. Beehr. Rer. Mecleb. lib. viii.

p. 603. They became so frequent and audacious, that the authority of the civil magistrate was unable to repress them. The ecclesiastical jurisdiction was called in to aid it. Councils were held with great solemnity, the bodies of the saints were brought thither, and, in presence of their sacred relics, anathemas were denounced against robbers, and other violators of the public peace. Bouquet, Recueil des Hist. tom. x. pp. 360, 431, 536. One of these forms of excommunication, issued A. D. 988, is still preserved, and is so singular, and composed with eloquence of such a peculiar kind, that it will not perhaps be deemed unworthy of a place here. After the usual introduction, and mentioning the outrage which gave occasion to the anathema, it runs thus: "Obtenebrescant oculi vestri, qui concupiverunt; arescant manus, quæ rapuerunt; debilitentur omnia membra, quæ adjuverunt. Semper laboretis, nec requiem inveniatis, fructuque vestri laboris privemini. Formidetis, et paveatis, a facie persequentis et non persequentis hostis, ut tabescendo deficiatis. Sit portio vestra cum Juda traditore Domini, in terra mortis et tenebrarum; donec corda vestra ad satisfactionem plenam convertantur. — Ne cessent a vobis hæ maledictiones, scelerum vestrorum persecutrices, quamdiu permanebitis in peccato pervasionis. Amen, Fiat, Fiat." Bouquet, ibid. p. 517.

NOTE XXX. — Sect. I. p. 96.

With respect to the progress of commerce, which I have described, p. 89, &c., it may be observed, that the Italian states carried on some commerce with the cities of the Greek empire as early as the age of Charlemagne, and imported into their own country the rich commodities of the East. Murat. Antiq. Ital. vol. ii. p. 882. In the tenth century the Venetians had opened a trade with

Alexandria in Egypt. Ibid. The inhabitants of Amalfi and Pisa had likewise extended their trade to the same ports. Murat. Ib. pp. 884, 885. The effects of the crusades in increasing the wealth and commerce of the Italian states, and particularly that which they carried on with the East, I have explained, p. 33 of this volume. They not only imported the Indian commodities from the East, but established manufactures of curious fabric in their own country. Several of these are enumerated by Muratori in his Dissertations concerning the *arts* and the *weaving* of the Middle Ages. Antiq. Ital. vol. ii. pp. 349, 399. They made great progress, particularly in the manufacture of silk, which had long been peculiar to the eastern provinces of Asia. Silk stuffs were of such high price in ancient Rome, that only a few persons of the first rank were able to purchase them. Under Aurelian, A. D. 270, a pound of silk was equal in value to a pound of gold. "Absit ut auro fila pensentur. Libra enim auri tunc libra serici fuit." Vopiscus in Aureliano. Justinian, in the sixth century, introduced the art of rearing silk-worms into Greece, which rendered the commodity somewhat more plentiful, though still it was of such great value as to remain an article of luxury or magnificence, reserved only for persons of the first order, or for public solemnities. Roger I., king of Sicily, about the year 1130, carried off a number of artificers in the silk trade from Athens, and, settling them in Palermo, introduced the culture of silk into his kingdom, from which it was communicated to other parts of Italy. Giannon. Hist. of Naples, b. xi. c. 7. This seems to have rendered silk so common, that, about the middle of the fourteenth century, a thousand citizens of Genoa appeared in one procession clad in silk robes. Sugar is likewise a production of the East. Some plants of the sugar-cane were brought from Asia; and the first at-

tempt to cultivate them in Sicily was made about the middle of the twelfth century. From thence they were transplanted into the southern provinces of Spain. From Spain they were carried to the Canary and Madeira Isles, and at length into the New World. Ludovico Guicciardini, in enumerating the goods imported into Antwerp about the year 1500, mentions the sugar which they received from Spain and Portugal as a considerable article. He describes that sugar as the product of the Madeira and Canary Islands. Descritt. de' Paesi Bassi, pp. 180, 181. The sugar-cane was introduced into the West Indies before that time; but the cultivation of it was not so improved or so extensive as to furnish an article of much consequence in commerce. In the Middle Ages, though sugar was not raised in such quantities, or employed for so many purposes, as to become one of the common necessaries of life, it appears to have been a considerable article in the commerce of the Italian states.

These various commodities with which the Italians furnished the other nations of Europe procured them a favorable reception in every kingdom. They were established in France in the thirteenth century with most extensive immunities. They not only obtained every indulgence favorable to their commerce, but personal rights and privileges were granted to them which the natives of the kingdom did not enjoy. Ordon. tom. iv. p. 668. By a special proviso they were exempted from the *droit d'aubaine*. Ibid. p. 670. As the Lombards (a name frequently given to all Italian merchants in many parts of Europe) engrossed the trade of every kingdom in which they settled, they became masters of its cash. Money, of course, was in their hands not only a sign of the value of other commodities, but became an object of commerce itself. They dealt largely as bankers.

In an ordinance, A. D. 1295, we find them styled *mercatores* and *campsores*. They carried on this as well as other branches of their commerce with somewhat of that rapacious spirit which is natural to monopolizers who are not restrained by the competition of rival traders. An absurd opinion, which prevailed in the Middle Ages, was, however, in some measure, the cause of their exorbitant demands, and may be pleaded in apology for them. Trade cannot be carried on with advantage unless the persons who lend a sum of money are allowed a certain premium for the use of it, as a compensation for the risk which they run in permitting another to traffic with their stock. This premium is fixed by law in all commercial countries, and is called the legal interest of money. But the fathers of the Church had preposterously applied the prohibitions of usury in Scripture to the payment of legal interest, and condemned it as a sin. The schoolmen, misled by Aristotle, whose sentiments they followed implicitly, and without examination, adopted the same error, and enforced it. Blackstone's Commentaries on the Laws of England, vol. ii. p. 455. Thus the Lombards found themselves engaged in a traffic which was everywhere deemed criminal and odious. They were liable to punishment if detected. They were not satisfied, therefore, with that moderate premium which they might have claimed if their trade had been open and authorized by law. They exacted a sum proportional to the danger and infamy of a discovery. Accordingly, we find that it was usual for them to demand twenty per cent for the use of money in the thirteenth century. Murat. Antiq. Ital. vol. i. p. 893. About the beginning of that century the countess of Flanders was obliged to borrow money in order to pay her husband's ransom. She procured the sum requisite either from Italian merchants or from Jews. The lowest

interest which she paid to them was above twenty per cent, and some of them exacted near thirty. Martene and Durand. Thesaur. Anecdotorum, vol. i. p. 886. In the fourteenth century, A. D. 1311, Philip IV fixed the interest which might be legally exacted in the fairs of Champagne at twenty per cent. Ordon. tom. i. p. 484. The interest of money in Aragon was somewhat lower. James I., A. D. 1242, fixed it by law at eighteen per cent. Petr. de Marca, *Marca* sive Limes Hispan. App. 1433. As late as the year 1490, it appears that the interest of money in Placentia was at the rate of forty per cent. This is the more extraordinary, because at that time the commerce of the Italian states was become considerable. Memorie Storiche de Piacenza, tom. viii. p. 104. Piac. 1760. It appears from Lud. Guicciardini, that Charles V. had fixed the rate of interest in his dominions in the Low Countries at twelve per cent, and at the time when he wrote, about the year 1560, it was not uncommon to exact more than that sum. He complains of this as exorbitant, and points out its bad effects both on agriculture and commerce. Descritt. de' Paesi Bassi, p. 172. This high interest of money is alone a proof that the profits on commerce were exorbitant, and that it was not carried on to great extent. The Lombards were likewise established in England in the thirteenth century, and a considerable street in the city of London still bears their name. They enjoyed great privileges, and carried on an extensive commerce, particularly as bankers. See Anderson's Chronol. Deduction, vol. i. pp. 137, 160, 204, 231, where the statutes or other authorities which confirm this are quoted. But the chief mart for Italian commodities was at Bruges. Navigation was then so imperfect, that to sail from any port in the Baltic, and to return again, was a voyage too great to be performed in one summer. For that reason, a magazine or store-

house, half-way between the commercial cities in the North and those in Italy, became necessary. Bruges was pitched upon as the most convenient station. That choice introduced vast wealth into the Low Countries. Bruges was at once the staple for English wool; for the woollen and linen manufactures of the Netherlands; for the naval stores and other bulky commodities of the North; and for the Indian commodities as well as domestic productions imported by the Italian states. The extent of its commerce in Indian goods with Venice alone appears from one fact. In the year 1318, five Venetian galeasses laden with Indian commodities arrived at Bruges, in order to dispose of their cargoes at the fair. These galeasses were vessels of very considerable burden. L. Guic. Descritt. de' Paesi Bassi, p. 174. Bruges was the greatest emporium in all Europe. Many proofs of this occur in the historians and records of the thirteenth and fourteenth centuries. But, instead of multiplying quotations, I shall refer my readers to Anderson, vol. i. pp. 12, 137, 213, 246, &c. The nature of this work prevents me from entering into any more minute detail, but there are some detached facts which give a high idea of the wealth both of the Flemish and Italian commercial states. The duke of Brabant contracted his daughter to the Black Prince, son of Edward III. of England, A. D. 1339, and gave her a portion which we may reckon to be of equal value with three hundred thousand pounds of our present money. Rymer's Fœdera, vol. v. p. 113. John Galeazzo Visconti, duke of Milan, concluded a treaty of marriage between his daughter and Lionel, duke of Clarence, Edward's third son, A. D. 1367, and granted her a portion equal to two hundred thousand pounds of our present money. Rymer's Fœdera, vol. vi. p. 547. These exorbitant sums, so far exceeding what was then granted by the most power-

ful monarchs, and which appear extraordinary even in the present age, when the wealth of Europe is so much increased, must have arisen from the riches which flowed into those countries from their extensive and lucrative commerce. The first source of wealth to the towns situated on the Baltic Sea seems to have been the herring fishery; the shoals of herrings frequenting at that time the coasts of Sweden and Denmark, in the same manner as they now resort to the British coasts. The effects of this fishery are thus described by an author of the thirteenth century. The Danes, says he, who were formerly clad in the poor garb of sailors, are now clothed in scarlet, purple, and fine linen. For they abound with wealth flowing from their annual fishery on the coast of Schonen; so that all nations resort to them, bringing their gold, silver, and precious commodities, that they may purchase herrings, which the Divine bounty bestows upon them. Arnoldus Lubecensis ap. Conring. de Urbib. German. § 87.

The Hanseatic League is the most powerful commercial confederacy known in history. Its origin towards the close of the twelfth century, and the objects of its union, are described by Knipschildt, Tractatus Historico-Politico-Juridicus de Juribus Civitat. Imper. lib. i. cap. 4. Anderson has mentioned the chief facts with respect to their commercial progress, the extent of the privileges which they obtained in different countries, their successful wars with several monarchs, as well as the spirit and zeal with which they contended for those liberties and rights without which it is impossible to carry on commerce to advantage. The vigorous efforts of a society of merchants attentive only to commercial objects, could not fail of diffusing new and more liberal ideas concerning justice and order in every country of Europe where they settled.

In England, the progress of commerce was extremely slow; and the causes of this are obvious. During the Saxon Heptarchy, England, split into many petty kingdoms, which were perpetually at variance with each other, exposed to the fierce incursions of the Danes, and other Northern pirates, and sunk in barbarity and ignorance, was in no condition to cultivate commerce, or to pursue any system of useful and salutary policy. When a better prospect began to open, by the union of the kingdom under one monarch, the Norman conquest took place. This occasioned such a violent shock, as well as such a sudden and total revolution of property, that the nation did not recover from it during several reigns. By the time that the constitution began to acquire some stability, and the English had so incorporated with their conquerors as to become one people, the nation engaged with no less ardor than imprudence in support of the pretensions of their sovereigns to the crown of France, and long wasted its vigor and genius in its wild efforts to conquer that kingdom. When, by ill success and repeated disappointments, a period was at last put to this fatal frenzy, and the nation, beginning to enjoy some repose, had leisure to breathe and to gather new strength, the destructive wars between the houses of York and Lancaster broke out, and involved the kingdom in the worst of all calamities. Thus, besides the common obstructions of commerce occasioned by the nature of the feudal government, and the state of manners during the Middle Ages, its progress in England was retarded by peculiar causes. Such a succession of events adverse to the commercial spirit was sufficient to have checked its growth, although every other circumstance had favored it. The English were accordingly one of the last nations in Europe who availed themselves of those commercial advantages which were natural or

peculiar to their country. Before the reign of Edward III., all the wool of England, except a small quantity wrought into coarse cloths for home consumption, was sold to the Flemings or Lombards, and manufactured by them. Though Edward, A. D. 1326, began to allure some of the Flemish weavers to settle in England, it was long before the English were capable of fabricating cloth for foreign markets, and the export of unwrought wool still continued to be the chief article of their commerce. Anderson, passim. — All foreign commodities were brought into England by the Lombards or Hanseatic merchants. The English ports were frequented by ships both from the North and South of Europe, and they tamely allowed foreigners to reap all the profits arising from the supply of their wants. The first commercial treaty of England on record is that with Haquin, king of Norway, A. D. 1217. Anders. vol. i. p. 108. But the English did not venture to trade in their own ships to the Baltic until the beginning of the fourteenth century. Ibid. p. 151. It was after the middle of the fifteenth, before they sent any ship into the Mediterranean. Ibid. p. 177. Nor was it long before this period that their vessels began to visit the ports of Spain or Portugal. But though I have pointed out the slow progress of the English commerce as a fact little attended to, and yet meriting consideration, the concourse of foreigners to the ports of England, together with the communication among all the different countries in Europe, which went on increasing from the beginning of the twelfth century, is sufficient to justify all the observations and reasonings in the text concerning the influence of commerce on the state of manners and of society.

NOTE XXXI. — Sect. III. p. 177.

I have not been able to discover the precise manner in which the justiza was appointed. Among the claims of the *junta* or *union* formed against James I., A. D. 1264, this was one: that the king should not nominate any person to be justiza, without the consent or approbation of the *ricos hombres*, or nobles. Zurita, Anales de Aragon, vol. i. p. 180. But the king, in his answer to their remonstrance, asserts, "that it was established by immemorial practice, and was conformable to the laws of the kingdom, that the king, in virtue of his royal prerogative, should name the justiza." Zurita, Ibid. 181. Blanca, 656. From another passage in Zurita, it appears that while the Aragonese enjoyed the privilege of *the union*, i. e. the power of confederating against their sovereign as often as they conceived that he had violated any of their rights and immunities, the justiza was not only nominated by the king, but held his office during the king's pleasure. Nor was this practice attended with any bad effects, as the privilege of the union was a sufficient and effectual check to any abuse of the royal prerogative. But when the privilege of the union was abolished as dangerous to the order and peace of society, it was agreed that the justiza should continue in office during life. Several kings, however, attempted to remove justizas who were obnoxious to them, and they sometimes succeeded in the attempt. In order to guard against this encroachment, which would have destroyed the intention of the institution, and have rendered the justiza the dependent and tool of the crown, instead of the guardian of the people, a law was enacted in the cortes, A. D. 1442, ordaining that the justiza should continue in office during life, and should not be removed from it unless by the authority of the cortes. Fueros

y Observancias del Reyno de Arag. lib. i. p. 22. By former laws, the person of the justiza had been declared sacred, and he was responsible only to the cortes. Ibid. p. 15, b. Zurita and Blanca, who both published their histories while the justiza of Aragon retained the full exercise of his privileges and jurisdiction, have neglected to explain several circumstances with regard to the office of that respectable magistrate, because they addressed their works to their countrymen, who were well acquainted with every particular concerning the functions of a judge, to whom they looked up as to the guardian of their liberties. It is vain to consult the later historians of Spain about any point with respect to which the excellent historians whom I have named are silent. The ancient constitution of their country was overturned, and despotism established on the ruin of its liberties, when the writers of this and the preceding century composed their histories, and on that account they had little curiosity to know the nature of those institutions to which their ancestors owed the enjoyment of freedom, or they were afraid to describe them with much accuracy. The spirit with which Mariana, his continuator Miniana, and Ferreras, write their histories, is very different from that of the two historians of Aragon, from whom I have taken my account of the constitution of that kingdom.

Two circumstances concerning the justiza, besides those which I have mentioned in the text, are worthy of observation: — 1. None of the *ricos hombres*, or noblemen of the first order, could be appointed justiza. He was taken out of the second class of *cavalleros*, who seem to have been nearly of the same condition or rank with gentlemen or commoners in Great Britain. Fueros y Observanc. del Reyno, &c. lib. i. p. 21, b. The reason was, by the laws of Aragon, the *ricos hombres* were not subject to capital punishment; but as it was necessary

for the security of liberty, that the justiza should be accountable for the manner in which he executed the high trust reposed in him, it was a powerful restraint upon him to know that he was liable to be punished capitally. Blanca, pp. 657, 756. Zurita, tom. ii. p. 229. Fueros y Observanc. lib. ix. pp. 182, b, 183. It appears, too, from many passages in Zurita, that the justiza was appointed to check the domineering and oppressive spirit of the nobles, as well as to set bounds to the power of the monarch, and therefore he was chosen from an order of citizens equally interested in opposing both.

2. A magistrate possessed of such vast powers as the justiza, might have exercised them in a manner pernicious to the state, if he himself had been subject to no control. A constitutional remedy was on that account provided against this danger. Seventeen persons were chosen by lot in each meeting of the cortes. These formed a tribunal, called the court of inquisition into the office of justiza. This court met at three stated terms in each year. Every person had liberty of complaining to it of any iniquity or neglect of duty in the justiza, or in the inferior judges, who acted in his name. The justiza and his deputies were called to answer for their conduct. The members of the court passed sentence by ballot. They might punish by degradation, confiscation of goods, or even with death. The law which erected this court and regulated the form of its procedure was enacted A. D. 1461. Zurita, Anales, iv. 102; Blanca, Comment. Rer. Aragon. 770. Previous to this period, inquiry was made into the conduct of the justiza, though not with the same formality. He was, from the first institution of the office, subject to the review of the cortes. The constant dread of such an impartial and severe inquiry into his behavior was a powerful motive to the vigilant and faithful discharge of his duty. A re-

markable instance of the authority of the justiza, when opposed to that of the king, occurs in the year 1386. By the constitution of Aragon, the eldest son or heir apparent of the crown possessed considerable power and jurisdiction in the kingdom. Fueros y Observan. del Reyno de Arag. lib. i. p. 16. Peter IV., instigated by a second wife, attempted to deprive his son of this, and enjoined his subjects to yield him no obedience. The prince immediately applied to the justiza; "the safeguard and defence," says Zurita, "against all violence and oppression." The justiza granted him the *firma de derecho*, the effect of which was, that, upon his giving surety to appear in judgment, he could not be deprived of any immunity or privilege which he possessed, but in consequence of a legal trial before the justiza, and of a sentence pronounced by him. This was published throughout the kingdom, and, notwithstanding the proclamation in contradiction to this which had been issued by the king, the prince continued in the exercise of all his rights, and his authority was universally recognized. Zurita, Anales de Aragon, tom. ii. p. 385.

Note XXXII. — Sect. III. p. 178.

I have been induced, by the concurring testimony of many respectable authors, to mention this as the constitutional form of the oath of allegiance which the Aragonese took to their sovereigns. I must acknowledge, however, that I have not found this singular oath in any Spanish author whom I have had an opportunity of consulting. It is mentioned neither by Zurita, nor Blanca, nor Argensola, nor Sayas, who were all historiographers appointed by the cortes of Aragon to record the transactions of the kingdom. All these writers possess a merit which is very rare among historians. They

are extremely accurate in tracing the progress of the laws and constitution of their country. Their silence with respect to this creates some suspicion concerning the genuineness of the oath. But as it is mentioned by so many authors, who produce the ancient Spanish words in which it is expressed, it is probable that they have taken it from some writer of credit, whose works have not fallen into my hands. The spirit of the oath is perfectly agreeable to the genius of the Aragonese constitution. Since the publication of the first edition, the learned M. Totze, Professor of History at Batzow, in the duchy of Mecklenburg, has been so good as to point out to me a Spanish author of great authority, who has published the words of this oath. It is Antonio Perez, a native of Aragon, Secretary to Philip II. The words of the oath are, "Nos que valemos tanto como vos, os hazemos nuestro rey y señor, con tal que nos guardeys nuestros fueros, y libertades, y si No, No." Las Obras y Relaciones de Ant. Perez, 8vo, por Juan de la Planche, 1631, p. 143.

The privilege of union which I have mentioned in the preceding note, and alluded to in the text, is indeed one of the most singular which could take place in a regular government, and the oath that I have quoted expresses nothing more than this constitutional privilege entitled the Aragonese to perform. If the king or his ministers violated any of the laws or immunities of the Aragonese, and did not grant immediate redress in consequence of their representations and remonstrances, the nobles of the first rank, or *ricos hombres de natura, y de mesnada*, the equestrian order, or the nobility of the second class, called *hidalgos y infanciones*, together with the magistrates of cities, might, either in the cortes, or in a voluntary assembly, join in union, and, binding themselves by mutual oaths and the exchange of hostages to be faithful to each

other, they might require the king, in the name and by the authority of this body corporate, to grant them redress. If the king refused to comply with their request, or took arms in order to oppose them, they might, in virtue of the privilege of union, instantly withdraw their allegiance from the king, refuse to acknowledge him as their sovereign, and proceed to elect another monarch; nor did they incur any guilt, or become liable to any prosecution, on that account. Blanca, Com. Rer. Arag. 661, 669. This union did not resemble the confederacies in other feudal kingdoms. It was a constitutional association, in which legal privileges were vested; which issued its mandates under a common seal, and proceeded in all its operations by regular and ascertained forms. This dangerous right was not only claimed, but exercised. In the year 1287, the Aragonese formed a union in opposition to Alfonso III., and obliged that king, not only to comply with their demands, but to ratify a privilege so fatal to the power of the crown. Zurita, Anales, tom. i. p. 322. In the year 1347, a union was formed against Peter IV. with equal success, and a new ratification of the privilege was extorted. Zurita, tom. ii. p. 202. But soon after, the king having defeated the leaders of the union in battle, the privilege of union was finally abrogated in the cortes, and all the laws or records which contained any confirmation of it were cancelled or destroyed. The king, in presence of the cortes, called for the act whereby he had ratified the union, and having wounded his hand with his poniard, he held it above the record. "That privilege," says he, "which has been so fatal to the kingdom, and so injurious to royalty, should be effaced with the blood of a king." Zurita, tom. ii. p. 229. The law abolishing the union is published. Fueros y Observanc. lib. ix. p. 178 From that period, the justiza became the consti-

tutional guardian of public liberty, and his power and jurisdiction occasioned none of those violent convulsions which the tumultuary privilege of the union was apt to produce. The constitution of Aragon, however, still remained extremely free. One source of this liberty arose from the early admission of the representatives of cities into the cortes. It seems probable from Zurita, that burgesses were constituent members of the cortes from its first institution. He mentions a meeting of cortes, A. D. 1133, in which the *procuradores de las ciudades y villas* were present. Tom. i. p. 51. This is the constitutional language in which their presence is declared in the cortes, after the journals of that court were regularly kept. It is probable, that an historian so accurate as Zurita would not have used these words, if he had not taken them from some authentic record. It was more than a century after this period before the representatives of cities formed a constituent part in the supreme assemblies of the other European nations. The free spirit of the Aragonese government is conspicuous in many particulars. The cortes not only opposed the attempts of their kings to increase their revenue, or to extend their prerogative, but they claimed rights and exercised powers which will appear extraordinary even in a country accustomed to the enjoyment of liberty. In the year 1286, the cortes claimed the privilege of naming the members of the king's council, and the officers of his household, and they seem to have obtained it for some time. Zurita, tom. i. pp. 303, 307. It was the privilege of the cortes to name the officers who commanded the troops raised by their authority. This seems to be evident from a passage in Zurita. When the cortes, in the year 1503, raised a body of troops to be employed in Italy, it passed an act empowering the king to name the officers who should command them, Zurita, tom. v. p. 274; which

plainly implies, that without this warrant it did not belong to him in virtue of his prerogative. In the Fueros y Observancias del Reyno de Aragon, two general declarations of the rights and privileges of the Aragonese are published; the one in the reign of Pedro I., A. D. 1283. and the other in that of James II., A. D. 1325. They are of such a length, that I cannot insert them; but it is evident from these, that not only the privileges of the nobility, but the rights of the people, personal as well as political, were, at that period, more extensive and better understood than in any kingdom in Europe. Lib. i. pp. 7, 9. The oath by which the king bound himself to observe those rights and liberties of the people was very solemn. Ibid. p. 14, b, and p. 15. The cortes of Aragon discovered not only the jealousy and vigilance which are peculiar to free states, in guarding the essential parts of the constitution, but they were scrupulously attentive to observe the most minute forms and ceremonies to which they were accustomed. According to the established laws and customs of Aragon, no foreigner had liberty to enter the hall in which the cortes assembled. Ferdinand, in the year 1481, appointed his queen, Isabella, regent of the kingdom, while he was absent during the course of the campaign. The law required that a regent should take the oath of fidelity in presence of the cortes; but as Isabella was a foreigner, before she could be admitted, the cortes thought it necessary to pass an act, authorizing the serjeant-porter to open the door of the hall, and to allow her to enter: "so attentive were they," says Zurita, "to observe their laws and forms, even such as may seem the most minute." Tom. iv. p. 313.

The Aragonese were no less solicitous to secure the personal rights of individuals, than to maintain the freedom of the constitution; and the spirit of their statutes

with respect to both was equally liberal. Two facts relative to this matter merit observation. By an express statute in the year 1335, it was declared to be unlawful to put any native Aragonese to the torture. If he could not be convicted by the testimony of witnesses, he was instantly absolved. Zurita, tom. ii. p. 66. Zurita records the regulation with the satisfaction natural to an historian, when he contemplates the humanity of his countrymen. He compares the laws of Aragon to those of Rome, as both exempted citizens and freemen from such ignominious and cruel treatment, and had recourse to it only in the trial of slaves. Zurita had reason to bestow such an encomium on the laws of his country. Torture was at that time permitted by the laws of every other nation in Europe. Even in England, from which the mild spirit of legislation has long banished it, torture was not, at that time, unknown. Observations on the Statutes, chiefly the more Ancient, &c., p. 66.

The other fact shows that the same spirit which influenced the legislature prevailed among the people. In the year 1485, the religious zeal of Ferdinand and Isabella prompted them to introduce the Inquisition into Aragon. Though the Aragonese were no less superstitiously attached than the other Spaniards to the Roman Catholic faith, and no less desirous to root out the seeds of error and of heresy which the Jews and Moors had scattered, yet they took arms against the inquisitors, murdered the chief inquisitor, and long opposed the establishment of that tribunal. The reason which they gave for their conduct was, that the mode of trial in the Inquisition was inconsistent with liberty. The criminal was not confronted with the witnesses, he was not acquainted with what they deposed against him, he was subjected to torture, and the goods of persons condemned were confiscated. Zurita, Anales, tom. iv. p. 341.

The form of government in the kingdom of Valencia, and principality of Catalonia, which were annexed to the crown of Aragon, was likewise extremely favorable to liberty. The Valencians enjoyed the privilege of *union* in the same manner with the Aragonese. But they had no magistrate resembling the justiza. The Catalonians were no less jealous of their liberties than the two other nations, and no less bold in asserting them. But it is not necessary for illustrating the following history to enter into any further detail concerning the peculiarities in the constitution of these kingdoms.

Note XXXIII. — Sect. III. p. 180.

I have searched in vain among the historians of Castile for such information as might enable me to trace the progress of laws and government in Castile, or to explain the nature of the constitution with the same degree of accuracy wherewith I have described the political state of Aragon. It is manifest, not only from the historians of Castile, but from its ancient laws, particularly the Fuero Juzgo, that its monarchs were originally elective. Ley. 2, 5, 8. They were chosen by the bishops, the nobility and the people. Ibid. It appears, from the same venerable code of laws, that the prerogative of the Castilian monarchs was extremely limited. Villaldiego, in his commentary on the Fuero Juzgo, produces many facts and authorities in confirmation of both these particulars. Dr. Geddes, who was well acquainted with Spanish literature, complains that he could find no author who gave a distinct account of the cortes or supreme assembly of the nation, or who described the manner in which it was held, or mentioned the precise number of members who had a right to sit in it. He produces, however, from Gil Gonzales d'Avila, who published a history of Henry

II., the writ of summons to the town of Abula, requiring it to choose representatives to appear in the cortes which he called to meet A. D. 1390. From this we learn that prelates, dukes, marquises, the masters of the three military orders, condes, and *ricos hombres*, were required to attend. These composed the bodies of ecclesiastics and nobles, which formed two members of the legislature. The cities which sent members to that meeting of the cortes were forty-eight. The number of representatives (for the cities had right to choose more or fewer according to their respective dignity) amounted to a hundred and twenty-five. Geddes, Miscellaneous Tracts, vol. i. p. 331. Zurita, having occasion to mention the cortes which Ferdinand held at Toro, A. D. 1505, in order to secure for himself the government of Castile after the death of Isabella, records, with his usual accuracy, the names of the members present, and of the cities which they represented. From that list it appears that only eighteen cities had deputies in this assembly. Anales de Aragon, tom. vi. p. 3. What was the occasion of this great difference in the number of cities represented in these two meetings of the cortes, I am unable to explain.

NOTE XXXIV. — Sect. III. p. 182.

A great part of the territory in Spain was engrossed by the nobility. L. Marinæus Siculus, who composed his treatise De Rebus Hispaniæ during the reign of Charles V., gives a catalogue of the Spanish nobility, together with the yearly rent of their estates. According to his account, which he affirms was as accurate as the nature of the subject would admit, the sum total of the annual revenue of their lands amounted to one million four hundred and eighty-two thousand ducats. If we make allowance for the great difference in the value of

money in the fifteenth century from that which it now bears, and consider that the catalogue of Marinæus includes only the *titulados*, or nobility whose families were distinguished by some honorary title, their wealth must appear very great. L. Marinæus, ap. Schott. Script. Hispan. vol. i. p. 323. The commons of Castile, in their contests with the crown, which I shall hereafter relate, complain of the extensive property of the nobility as extremely pernicious to the kingdom. In one of their manifestoes they assert, that from Valladolid to St. Jago in Galicia, which was a hundred leagues, the crown did not possess more than three villages. All the rest belonged to the nobility, and could be subjected to no public burden. Sandov. Vida del Emperador Carl. V. vol. i. p. 422. It appears from the testimony of authors quoted by Bovadilla, that these extensive possessions were bestowed upon the *ricos hombres*, *hidalgos*, and *cavalleros*, by the kings of Castile, in reward for the assistance which they had received from them in expelling the Moors. They likewise obtained by the same means a considerable influence in the cities, many of which anciently depended upon the nobility. Politica para Corregidores, Amb. 1750, fol. vol. i. pp. 440, 442.

Note XXXV. — Sect. III. p. 185.

I have been able to discover nothing certain, as I observed, Note XVIII., with respect to the origin of communities or free cities in Spain. It is probable, that, as soon as the considerable towns were recovered from the Moors, the inhabitants who fixed their residence in them, being persons of distinction and credit, had all the privilege of municipal government and jurisdiction conferred upon them. Many striking proofs occur of the splendor, wealth, and power of the Spanish cities. Hieronymus

Paulus wrote a description of Barcelona in the year 1491, and compares the dimensions of the town to that of Naples, and the elegance of its buildings, the variety of its manufactures, and the extent of its commerce, to Florence. Hieron. Paulus, ap. Schott. Script. Hisp. vol. ii. p. 844. Marinæus describes Toledo as a large and populous city. A great number of its inhabitants were persons of quality and of illustrious rank. Its commerce was great. It carried on with great activity and success the manufactures of silk and wool; and the number of inhabitants employed in these two branches of trade amounted nearly to ten thousand. Marin. ubi supr. p. 308. "I know no city," says he, "that I would prefer to Valladolid for elegance and splendor." Ibid. p. 312. We may form some estimate of its populousness from the following circumstances. The citizens having taken arms in the year 1516, in order to oppose a measure concerted by Cardinal Ximenes, they mustered in the city, and in the territory which belonged to it, thirty thousand fighting men. Sandov. Vida del Emper. Carl. V. tom. i. p. 81. The manufactures carried on in the towns of Spain were not intended merely for home consumption; they were exported to foreign countries, and their commerce was a considereble source of wealth to the inhabitants. The maritime laws of Barcelona are the foundation of mercantile jurisprudence in modern times, as the Leges Rhodiæ were among the ancients. All the commercial states in Italy adopted these laws, and regulated their trade according to them. Sandi, Storia Civile Veneziana, vol. ii. p. 865. It appears from several ordinances of the kings of France, that the merchants of Aragon and Castile were received on the same footing, and admitted to the same privileges, with those of Italy. Ordonnances des Roys, &c. tom. ii. p. 135, tom. iii. pp. 166, 504, 635. Cities in such a flourishing state became

a respectable part of the society, and were entitled to a considerable share in the legislature. The magistrates of Barcelona aspired to the highest honor a Spanish subject can enjoy, that of being covered in the presence of their sovereign, and of being treated as grandees of the kingdom. Origin de la Dignidad de Grande de Castilla por Don Alonso Carillo, Madr. 1657, p. 18.

Note XXXVI.—Sect. III. p. 187.

The military order of St. Jago, the most honorable and opulent of the three Spanish orders, was instituted about the year 1170. The bull of confirmation by Alexander III. is dated A. D. 1176. At that time a considerable part of Spain still remained under subjection to the Moors, and the whole country was much exposed to depredations, not only of the enemy, but of banditti. It is no wonder, then, that an institution, the object of which was to oppose the enemies of the Christian faith, and to restrain and punish those who disturbed the public peace, should be extremely popular, and meet with general encouragement. The wealth and power of the order became so great, that, according to one historian, the Grand Master of St. Jago was the person in Spain of greatest power and dignity next to the king. Æl. Anton. Nebrissensis, ap. Schott. Scrip. Hisp. i. 812. Another historian observes, that the order possessed everything in Castile that a king would most desire to obtain. Zurita, Anales, v. 22. The knights took the vows of obedience, of poverty, and of conjugal chastity. By the former they were bound implicitly to obey the commands of their grand master. The order could bring into the field a thousand men-at-arms. Æl. Ant. Nebriss. p. 813. If, as we have reason to believe, these men-at-arms were accompanied as was usual in that age, this was a formidable body of cav-

alry. There belonged to this order eighty-four commanderies, and two hundred priories and other benefices. Dissertations sur la Chevalerie par Hon. de St. Marie, p. 262. It is obvious how formidable to his sovereign the command of these troops, the administration of such revenues, and the disposal of so many offices, must have rendered a subject. The other two orders, though inferior to that of St. Jago in power and wealth, were nevertheless very considerable fraternities. When the conquest of Granada deprived the knights of St. Jago of those enemies against whom their zeal was originally directed, superstition found out a new object, in defence of which they engaged to employ their courage. To their usual oath they added the following clause: "We do swear to believe, to maintain, and to contend in public and in private, that the Virgin Mary, the Mother of God, our Lady, was conceived without the stain of original sin." This addition was made about the middle of the seventeenth century. Honoré de St. Marie, Dissertations, &c. p. 263. — Nor is such a singular engagement peculiar to the order of St. Jago. The members of the second military order in Spain, that of Calatrava, equally zealous to employ their prowess in defence of the honors of the Blessed Virgin, have likewise professed themselves her true knights. Their vow, conceived in terms more theologically accurate than that of St. Jago, may afford some amusement to an English reader. "I vow to God, to the grand master, and to you who here represent his person, that now, and for ever, I will maintain and contend, that the Virgin Mary, Mother of God, our Lady, was conceived without original sin, and never incurred the pollution of it; but that in the moment of her happy conception, and of the union of her soul with her body, the Divine grace prevented and preserved her from original guilt, by the merits of the passion and death of Christ,

our Redeemer, her future Son, foreseen in the Divine counsel, by which she was truly redeemed, and by a more noble kind of redemption than any of the children of Adam. In the belief of this truth, and in maintaining the honor of the most Holy Virgin, through the strength of Almighty God, I will live and will die." Definiciones de la Orden. de Calatrava, conforme al Capitulo General en 1652, fol. Madr. 1748, p. 153. Though the Church of Rome hath prudently avoided to give its sanction to the doctrine of the immaculate conception, and the two great monastic orders of St. Dominick and St. Francis have espoused opposite opinions concerning it, the Spaniards are such ardent champions for the honor of the Virgin, that, when the present king of Spain instituted a new military order in the year 1771, in commemoration of the birth of his grandson, he put it under the immediate protection of the most Holy Mary in the mystery of her immaculate conception. Constituciones de la real y distinguida Orden. Española de Carlos III. p. 7. To undertake the defence of the Virgin Mary's honor had such a resemblance to that species of refined gallantry which was the original object of chivalry, that the zeal with which the military orders bound themselves, by a solemn vow, to defend it, was worthy of a true knight, in those ages when the spirit of the institution subsisted in full vigor. But in the present age it must excite some surprise to see the institution of an illustrious order connected with a doctrine so extravagant and destitute of any foundation in Scripture.

Note XXXVII. — Sect. III. p. 190.

I have frequently had occasion to take notice of the defects in police during the Middle Ages, occasioned by the feebleness of government, and the want of proper

subordination among the different ranks of men. I have observed in a former note, that this greatly interrupted the intercourse between nations, and even between different places in the same kingdom. The descriptions which the Spanish historians give of the frequency of rapine, murder, and every act of violence, in all the provinces of Spain, are amazing, and present to us the idea of a society but little removed from the disorder and turbulence of that which has been called a state of nature. Zurita, Anales de Arag. i. 175. Æl. Ant. Nebrissensis Rer. a Ferdin. Gestar. Hist. ap. Schottum, ii. 849. Though the excess of these disorders rendered the institution of the *santa hermandad* necessary, great care was taken at first to avoid giving any offence or alarm to the nobility. The jurisdiction of the judges of the hermandad was expressly confined to crimes which violated the public peace. All other offences were left to the cognizance of the ordinary judges. If a person was guilty of the most notorious perjury, in any trial before a judge of the hermandad, he could not punish him, but was obliged to remit the case to the ordinary judge of the place. Commentaria in Regias Hispan. Constitut. per Alph. de Azevedo, pars v. p. 223, &c. fol. Duaci, 1612. Notwithstanding these restrictions, the barons were early sensible how much the establishment of the hermandad would encroach on their jurisdiction. In Castile some opposition was made to the institution; but Ferdinand had the address to obtain the consent of the constable to the introduction of the hermandad into that part of the kingdom where his estate lay; and by that means, as well as the popularity of the institution, he surmounted every obstacle that stood in its way. Æl. Ant. Nebrissen. 851. In Aragon the nobles combined against it with great spirit; and Ferdinand, though he supported it with vigor, was obliged to make some concessions in

order to reconcile them. Zurita, Anales de Arag. iv. 356. The power and revenue of the hermandad in Castile seem to have been very great. Ferdinand, when preparing for the war against the Moors of Granada, required of the hermandad to furnish him sixteen thousand beasts of burden, together with eight thousand men to conduct them, and he obtained what he demanded. Æl. Ant. Nebriss. 881. The hermandad has been found to be of so much use in preserving peace, and restraining or detecting crimes, that it is still continued in Spain; but as it is no longer necessary either for moderating the power of the nobility or extending that of the crown, the vigor and authority of the institution diminish gradually.

Note XXXVIII. — Sect. III. p. 193.

Nothing is more common among antiquaries, and there is not a more copious source of error, than to decide concerning the institutions and manners of past ages by the forms and ideas which prevail in their own times. The French lawyers in the seventeenth and eighteenth centuries having found their sovereigns in possession of absolute power, seem to think it a duty incumbent on them to maintain that such unbounded authority belonged to the crown in every period of their monarchy. "The government of France," says M. de Réal, very gravely, "is purely monarchical at this day, as it was from the beginning. Our kings were absolute originally, as they are at present." Science du Gouvernement, tom. ii. p. 31. It is impossible, however, to conceive two states of civil society more unlike to each other than that of the French nation under Clovis, and that under Louis XV. It is evident from the codes of laws of the various tribes which settled in Gaul and the countries adjacent to it, as well as from the history of Gregory of Tours, and

other early annalists, that among all these people the form of government was extremely rude and simple, and that they had scarcely begun to acquire the first rudiments of that order and police which are necessary in extensive societies. The king or leader had the command of soldiers or companions, who followed his standard from choice, not by constraint. I have produced the clearest evidence of this, Note VI. An event related by Gregory of Tours, lib. iv. c. 14, affords the most striking proof of the dependence of the early French kings on the sentiments and inclination of their people. Clotaire I. having marched at the head of his army, in the year 553, against the Saxons, that people, intimidated at his approach, sued for peace, and offered to pay a large sum to the offended monarch. Clotaire was willing to close with what they proposed. But his army insisted to be led forth to battle. The king employed all his eloquence to persuade them to accept of what the Saxons were ready to pay. The Saxons, in order to soothe them, increased their original offer. The king renewed his solicitations; but the army, enraged, rushed upon the king, tore his tent in pieces, dragged him out of it, and would have slain him on the spot, if he had not consented to lead them instantly against the enemy.

If the early monarchs of France possessed such limited authority, even while at the head of their army, their prerogative during peace will be found to be still more confined. They ascended the throne not by any hereditary right, but in consequence of the election of their subjects. In order to avoid an unnecessary number of quotations, I refer my readers to Hottomanni Franco-Gallia, cap. vi. p. 47, edit. 1573, where they will find the fullest proof of this from Gregory of Tours, Amoinus, and the most authentic historians of the Merovingian kings. The effect of this election was not to invest

them with absolute power. Whatever related to the general welfare of the nation was submitted to public deliberation, and determined by the suffrage of the people, in the annual assemblies called "les champs de Mars," and "les champs de Mai." These assemblies were called *champs*, because, according to the custom of all the barbarous nations, they were held in the open air, in some plain capable of containing the vast number of persons who had a right to be present. Jo. Jac. Sorberus de Comitiis Veterum Germanorum, vol. i. § 19, &c. They were denominated Champs de Mars and de Mai, from the months in which they were held. Every freeman seems to have had a right to be present in these assemblies. Sorberus, ibid. § 133, &c. The ancient annals of the Franks describe the persons who were present in the assembly held A. D. 788, in these words: "In placito Ingelheimensi conveniunt pontifices, majores, minores, sacerdotes, reguli, duces, comites, præfecti, cives, oppidani." Apud Sorber. § 304. There everything that concerned the happiness of their country, says an ancient historian, everything that could be of benefit to the Franks, was considered and enjoined. Fredegarius, ap. Du Cange, Glossar. voc. *Campus Martii.* Chlotharius II. describes the business, and acknowledges the authority of these assemblies. "They are called," says he, "that whatever relates to the common safety may be considered and resolved by common deliberation; and whatever they determine, to that I will conform." Amoinus de Gest. Franc. lib. iv. c. i. ap. Bouquet, Recueil, iii. 116. The statutory clauses, or words of legislative authority in the decrees issued in these assemblies, run not in the name of the king alone. "We have treated," says Childebert, in a decree, A. D. 532, in the assembly of March, "together with our nobles, concerning some affairs, and we now publish the conclusion, that it may

come to the knowledge of all." Childeb. Decret. ap. Bouquet, Recueil des Histor. tom. iv. p. 3. "We have agreed together with our vassals." Ibid. § 2. "It is agreed in the assembly in which we are all united." Ibid. § 4. The Salic laws, the most venerable monument of French jurisprudence, were enacted in the same manner. "Dictaverunt Salicam legem proceres ipsius gentis, qui tunc temporis apud eam erant rectores. Sunt autem electi de pluribus viri quatuor — qui per tres Mallos convenientes, omnes causarum origines solicite discurrendo, tractantes de singulis, judicium decreverunt hoc modo." Præf. Leg. Salic. ap Bouquet. Ibid. p. 122. "Hoc decretum est apud regem et principes ejus, et apud cunctum populum christianum, qui intra regnum Merwingorum consistunt." Ibid. p. 124. Nay, even in their charters, the kings of the first race are careful to specify that they were granted with the consent of their vassals. "Ego Childebertus, rex, una cum consensu et voluntate Francorum," &c. A. D. 558. Bouquet, ibid. 622. "Chlotharius III. una cum patribus nostris, episcopis, optimatibus, cæterisque palatii nostri ministris," A. D. 664. Ibid. 648. "De consensu fidelium nostrorum." Mably, Observ. tom. i. p. 239. The historians likewise describe the functions of the king in the national assemblies in such terms as imply that his authority there was extremely small, and that everything depended on the court itself. "Ipse rex," says the author of Annales Francorum, speaking of the Field of March, "sedebat in sella regia, circumstante exercitu, præcipiebatque is, die illo, quicquid a Francis decretum erat." Bouquet, Recueil, tom. ii. p. 647.

That the general assemblies exercised supreme jurisdiction over all persons, and with respect to all causes, is so evident as to stand in need of no proof. The trial of Brunehaut, A. D. 613, how unjust soever the sentence

against her may be, as related by Fredegarius, Chron. cap. 42, Bouquet, ibid. 430, is in itself sufficient proof of this. The notorious violence and iniquity of the sentence serve to demonstrate the extent of jurisdiction which this assembly possessed, as a prince so sanguinary as Clothaire II. thought the sanction of its authority would be sufficient to justify his rigorous treatment of the mother and grandmother of so many kings.

With respect to conferring donatives on the prince, we may observe, that among nations whose manners and political institutions are simple, the public, as well as individuals, having few wants, they are little acquainted with taxes, and free uncivilized tribes disdain to submit to any stated imposition. This was remarkably the case of the Germans, and of all the various people that issued from that country. Tacitus pronounces two tribes not to be of German origin, because they submitted to pay taxes. De Morib. Germ. c. 43. And speaking of another tribe according to the ideas prevalent in Germany, he says: "They were not degraded by the imposition of taxes." Ibid. c. 29. Upon the settlement of the Franks in Gaul we may conclude, that, while elated with the consciousness of victory, they would not renounce the high-spirited ideas of their ancestors, or voluntarily submit to a burden which they regarded as a badge of servitude. The evidence of the earliest records and historians justifies this conclusion. M. de Montesquieu, in the twelfth and subsequent chapters of the thirteenth book of L'Esprit des Loix, and M. de Mably, Observat. sur l'Hist. de France, tom. i. p. 247, have investigated this fact with great attention, and have proved clearly that the property of freemen among the Franks was not subject to any stated tax; that the state required nothing from persons of this rank but military service at their

own expense, and that they should entertain the king in their houses when he was upon any progress through his dominions, or his officers when sent on any public employment, furnishing them with carriages and horses. Monarchs subsisted almost entirely upon the revenues of their own domains, and upon the perquisites arising from the administration of justice, together with a few small fines and forfeitures exacted from such as had been guilty of certain trespasses. It is foreign from my subject to enumerate these. The reader may find them in Observat. de M. de Mably, vol. i. p. 267.

When any extraordinary aid was granted by freemen to their sovereign it was purely voluntary. In the annual assembly of March or May, it was the custom to make the king a present of money, of horses or arms, or of some other thing of value. This was an ancient custom, and derived from their ancestors the Germans. "Mos est civitatibus, ultro ac viritim conferre principibus, vel armentorum, vel frugum, quod pro honore acceptum, etiam necessitatibus subvenit." Tacit. de Mor. Germ. c. 15. These gifts, if we may form a judgment concerning them from the general terms in which they are mentioned by the ancient historians, were considerable, and made no small part of the royal revenue. Many passages to this purpose are produced by M. Du Cange, Dissert. iv. sur Joinville, p. 153. Sometimes a conquered people specified the gift which they bound themselves to pay annually, and it was exacted as a debt if they failed. Anales Metenses, ap. Du Cange, ibid. p. 155. It is probable that the first step towards taxation was to ascertain the value of these gifts, which were originally gratuitous, and to compel the people to pay the sum at which they were rated. Still, however, some memory of their original was preserved, and the aids granted to monarchs in

all the kingdoms of Europe were termed *benevolences* or *free gifts*.

The kings of the second race in France were raised to the throne by the election of the people. "Pepinus rex pius," says an author who wrote a few years after the transaction which he records, "per authoritatem papæ, et unctionem sancti chrismatis et electionem omnium Francorum in regni solio sublimatus est." Clausula de Pepini Consecratione, ap. Bouq. Recueil des Histor. tom. v. p. 9. At the same time, as the chief men of the nation had transferred the crown from one family to another, an oath was exacted of them, that they should maintain on the throne the family which they had now promoted; "ut nunquam de alterius lumbis regem in ævo præsumant eligere." Ibid. p. 10. This oath the nation faithfully observed during a considerable space of time. The posterity of Pepin kept possession of the throne; but with respect to the manner of dividing their dominions among their children, princes were obliged to consult the general assembly of the nation. Thus Pepin himself, A. D. 768, appointed his two sons, Charles and Carlomannus, to reign as joint sovereigns; but he did this, "una cum consensu Francorum et procerum suorum seu et episcoporum," before whom he laid the matter in their general assembly. Conventus apud Sanctum Dionysium, Capitular. vol. i. p. 187. This destination the French confirmed in a subsequent assembly, which was called upon the death of Pepin; for, as Eginhart relates, they not only appointed them kings, but by their authority they regulated the limits of their respective territories. Vita Car. Magni, ap. Bouquet, Recueil, tom. v. p. 90. In the same manner, it was by the authority of the supreme assemblies that any dispute which arose among the descendants of the royal family was determined. Charlemagne

recognises this important part of their jurisdiction, and confirms it, in his charter concerning the partition of his dominions; for he appoints, that, in case of any uncertainty with respect to the right of the several competitors, he whom the people choose shall succeed to the crown. Capitular. vol. i. p. 442.

Under the second race of kings, the assemblies of the nation, distinguished by the name of *conventus*, *malli*, *placita*, were regularly assembled once a year at least, and frequently twice in the year. One of the most valuable monuments of the history of France is the treatise of Hincmarus, archbishop of Rheims, De Ordine Palatii. He died A. D. 882, only sixty-eight years after Charlemagne, and he relates in that short discourse the facts which were communicated to him by Adalhardus, a minister and confidant of Charlemagne. From him we learn that this great monarch never failed to hold the general assembly of his subjects every year. "In quo placito generalitas universorum majorum tam clericorum quam laicorum conveniebat." Hincm. Oper. edit. Sirmondi, vol. ii. c. 29, p. 211. In these assemblies, matters which related to the general safety and state of the kingdom were always discussed before they entered upon any private or less important business. Ibid. c. 33, p. 213. His immediate successors imitated his example, and transacted no affair of importance without the advice of their great council.

Under the second race of kings the genius of the French government continued to be in a good measure democratical. The nobles, the dignified ecclesiastics, and the great officers of the crown, were not the only members of the national council; the people, or the whole body of freemen, either in person or by their representatives, had a right to be present in it. Hincmarus, in describing the manner of holding the general

assemblies, says, that if the weather was favorable they met in the open air; but if otherwise, they had different apartments allotted to them; so that the dignified clergy were separated from the laity, and the "comites vel hujusmodi principes sibimet honorificabiliter a cætera multitudine segregarentur." Ibid. c. 35, p. 114. Agobardus, archbishop of Lyons, thus describes a national council in the year 833, wherein he was present. "Qui ubique conventus extitit ex reverendissimis episcopis, et magnificentissimis viris illustribus, collegio quoque abbatum et comitum, promiscuæque ætatis et dignitatis populo." The *cætera multitudo* of Hincmarus is the same with the *populus* of Agobardus, and both describe the inferior order of freemen, the same who were afterwards known in France by the name of the third estate, and in England by the name of commons. The people, as well as the members of higher dignity, were admitted to a share of the legislative power. Thus, by a law, A. D. 803, it is ordained, "That the question shall be put to the people with respect to every new law, and if they shall agree to it, they shall confirm it by their signature." Capit. vol. i. 394. There are two capitularia which convey to us a full idea of the part which the people took in the administration of government. When they felt the weight of any grievance, they had a right to petition the sovereign for redress. One of these petitions, in which they desire that ecclesiastics might be exempted from bearing arms, and from serving in person against the enemy, is still extant. It is addressed to Charlemagne, A. D. 803, and expressed in such terms as could have been used only by men conscious of liberty, and of the extensive privileges which they possessed. They conclude with requiring him to grant their demand, if he wished that they should any longer continue faithful subjects to him. That great monarch, instead of being offended

or surprised at the boldness of their petition, received it in a most gracious manner, and signified his willingness to comply with it. But, sensible that he himself did not possess legislative authority, he promises to lay the matter before the next general assembly, that such things as were of common concern to all might be there considered and established by common consent. Capitul. tom. i. pp. 405–409. As the people by their petitions brought matters to be proposed in the general assembly, we learn from another capitulare the form in which they were approved there, and enacted as laws. The propositions were read aloud, and then the people were required to declare whether they assented to them or not. They signified their assent by crying three times, "We are satisfied"; and then the capitulare was confirmed by the subscription of the monarch, the clergy, and the chief men of the laity. Capitul. tom i. p. 627, A. D. 822. It seems probable from a capitulare of Carolus Calvus, A. D. 851, that the sovereign could not refuse his assent to what was proposed and established by his subjects in the general assembly. Tit. ix. § 6. Capitul. vol. ii. p. 47. It is unnecessary to multiply quotations concerning the legislative power of the national assembly of France under the second race, or concerning its right to determine with regard to peace and war. The uniform style of the Capitularia is an abundant confirmation of the former. The reader who desires any further information with respect to the latter, may consult Les Origines ou l'Ancien Gouvernement de la France, &c. tom. iii p. 87, &c. What has been said with respect to the admission of the people or their representatives into the supreme assembly merits attention, not only in tracing the progress of the French government, but on account of the light which it throws upon a similar question agitated in England, concerning the time when the commons became part of the legislative body in that kingdom.

Note XXXIX. — Sect. III. p. 195.

That important change which the constitution of France underwent, when the legislative power was transferred from the great council of the nation to the king, has been explained by the French antiquaries with less care than they bestow in illustrating other events in their history. For that reason, I have endeavored with greater attention to trace the steps which led to this memorable revolution. I shall here add some particulars which tend to throw additional light upon it. The Leges Salicæ, the Leges Burgundionum, and other codes published by the several tribes which settled in Gaul, were general laws extending to every person, to every province and district where the authority of those tribes was acknowledged. But they seem to have become obsolete; and the reason of their falling into disuse is very obvious. Almost the whole property of the nation was allodial when these laws were framed. But when the feudal institutions became general, and gave rise to an infinite variety of questions peculiar to that species of tenure, the ancient codes were of no use in deciding with regard to these, because they could not contain regulations applicable to cases which did not exist at the time when they were compiled. This considerable change in the nature of property made it necessary to publish the new regulations contained in the *capitularia*. Many of these, as is evident from the perusal of them, were public laws extending to the whole French nation, in the general assembly of which they were enacted. The weakness of the greater part of the monarchs of the second race, and the disorder into which the nation was thrown by the depredations of the Normans, encouraged the barons to usurp an independent power formerly unknown in France. The nature and extent

of that jurisdiction which they assumed I have formerly considered. The political union of the kingdom was at an end, its ancient constitution was dissolved, and only a feudal relation subsisted between the king and his vassals. The regal jurisdiction extended no further than the domains of the crown. Under the last kings of the second race, these were reduced almost to nothing. Under the first kings of the third race, they comprehended little more than the patrimonial estate of Hugh Capet, which he annexed to the crown. Even with this accession, they continued to be of small extent. Velly, Hist. de France, tom. iii. p. 32. Many of the most considerable provinces in France did not at first acknowledge Hugh Capet as a lawful monarch. There are still extant several charters, granted during the first years of his reign, with this remarkable clause in the form of dating the charter: "Deo regnante, rege expectante, regnante Domino nostro Jesu Christo Francis autem contra jus regnum usurpante Ugone rege." Bouquet, Recueil, tom. x. p. 544. A monarch whose title was thus openly disputed, was not in a condition to assert the royal jurisdiction, or to limit that of the barons.

All these circumstances rendered it easy for the barons to usurp the rights of royalty within their own territories. The Capitularia became no less obsolete than the ancient laws; local customs were everywhere introduced, and became the sole rule by which all civil transactions were conducted, and all causes were tried. The wonderful ignorance which became general in France during the ninth and tenth centuries contributed to the introduction of customary law. Few persons, except ecclesiastics, could read; and as it was not in the power of such illiterate persons to have recourse to written laws, either as their guide in business or their rule in administering justice, the customary law, the

knowledge of which was preserved by tradition, universally prevailed.

During this period, the general assembly of the nation seems not to have been called, nor to have once exerted its legislative authority. Local customs regulated and decided everything. A striking proof of this occurs in tracing the progress of the French jurisprudence. The last of the Capitularia collected by M. Baluze, was issued in the year 921, by Charles the Simple. A hundred and thirty years elapsed from that period to the publication of the first ordinance of the kings of the third race, contained in the great collection of M. Laurière, and the first ordinance which appears to be an act of legislation extending to the whole kingdom is that of Philip Augustus, A. D. 1190. Ordon. tom. i. pp. 1, 18. During that long period of two hundred and sixty-nine years, all transactions were directed by local customs, and no addition was made to the statutory law of France. The ordinances, previous to the reign of Philip Augustus, contain regulations, the authority of which did not extend beyond the king's domains.

Various instances occur of the caution with which the kings of France ventured at first to exercise legislative authority. M. l'Ab. de Mably produces an ordinance of Philip Augustus, A. D. 1206, concerning the Jews, who in that age were in some measure the property of the lord in whose territories they resided. But it is rather a treaty of the king with the countess of Champagne, and the Compte de Dampierre, than an act of royal power; and the regulations in it seem to be established not so much by his authority as by their consent. Observat. sur l'Hist. de France, ii. p. 355. In the same manner an ordinance of Louis VIII. concerning the Jews, A. D. 1223, is a contract between the king and his nobles, with respect to their manner of treating that unhappy race of

men. Ordon. tom. i. p. 47. The Establissemens of St. Louis, though well adapted to serve as general laws to the whole kingdom, were not published as such, but only as a complete code of customary law, to be of authority within the king's domains. The wisdom, the equity, and the order conspicuous in that code of St. Louis, procured it a favorable reception throughout the kingdom. The veneration due to the virtues and good intentions of its author, contributed not a little to reconcile the nation to that legislative authority which the king began to assume. Soon after the reign of St. Louis, the idea of the king's possessing supreme legislative power became common. If, says Beaumanoir, the king makes any establishment specially for his own domain, the barons may nevertheless adhere to their ancient customs; but if the establishment be general, it shall be current throughout the whole kingdom, and we ought to believe that such establishments are made with mature deliberation, and for the general good. Coust. de Beauvoisis, c. 48, p. 265. Though the kings of the third race did not call the general assembly of the nation, during the long period from Hugh Capet to Philip the Fair, yet they seem to have consulted the bishops and barons who happened to be present in their court, with respect to any new law which they published. Examples of this occur, Ordon. tom. i. p. 3 et 5. This practice seems to have continued as late as the reign of St. Louis, when the legislative authority of the crown was well established. Ordon. tom. i. p. 58, A. D. 1246. This attention paid to the barons facilitated the king's acquiring such full possession of the legislative power, as enabled them afterwards to exercise it without observing that formality.

The assemblies distinguished by the name of the states general were first called A. D. 1302, and were held occasionally from that period to the year 1614, since which

time they have not been summoned. These were very different from the ancient assemblies of the French nation under the kings of the first and second race. There is no point with respect to which the French antiquaries are more generally agreed, than in maintaining that the states general had no suffrage in the passing of laws, and possessed no proper legislative jurisdiction. The whole tenor of the French history confirms this opinion. The form of proceeding in the states general was this. The king addressed himself, at opening the meeting, to the whole body assembled in one place, and laid before them the affairs on account of which he had summoned them. Then the deputies of each of the three orders, of nobles, of clergy, and of the third estate, met apart, and prepared their *cahier*, or memorial, containing their answer to the propositions which had been made to them, together with the representations which they thought proper to lay before the king. These answers and representations were considered by the king in his council, and generally gave rise to an ordinance. These ordinances were not addressed to the three estates in common. Sometimes the king addressed an ordinance to each of the estates in particular. Sometimes he mentioned the assembly of the three estates. Sometimes mention is made only of the assembly of that estate to which the ordinance is addressed. Sometimes no mention at all is made of the assembly of estates, which suggested the propriety of enacting the law. Préface au tom. iii. des Ordon. p. xx.

Thus the states general had only the privilege of advising and remonstrating; the legislative authority resided in the king alone.

Note XL. — Sect. III. p. 200.

If the parliament of Paris be considered only as the

supreme court of justice, everything relative to its origin and jurisdiction is clear and obvious. It is the ancient court of the king's palace, new-modelled, rendered stationary, and invested with an extensive and ascertained jurisdiction. The power of this court, while employed in this part of its functions, is not the object of present consideration. The pretensions of the parliament to control the exercise of the legislative authority, and its claim of a right to interpose with respect to public affairs, and the political administration of the kingdom, lead to inquiries attended with great difficulty. As the officers and members of the parliament of Paris were anciently nominated by the king, were paid by him, and on several occasions were removed by him at pleasure (Chronic. Scandaleuse de Louis XI. chez les Mém. de Comines, tom. ii. p. 51, edit. de M. Lenglet de Fresnoy), they cannot be considered as representatives of the people, nor could they claim any share in the legislative power as acting in their name. We must therefore search for some other source of this high privilege. 1. The parliament was originally composed of the most eminent persons in the kingdom. The peers of France, ecclesiastics of the highest order, and noblemen of illustrious birth, were members of it, to whom were added some clerks and councillors learned in the laws. Pasquier, Recherches, p. 44, &c. Encyclopédie, tom. xii. art. *Parlement*, pp. 3, 5. A court thus constituted was properly a committee of the states general of the kingdom, and was composed of those barons and *fideles*, whom the kings of France were accustomed to consult with regard to every act of jurisdiction or legislative authority. It was natural, therefore, during the intervals between the meetings of the states general, or during those periods when that assembly was not called, to consult the parliament, to lay matters of public concern before it, and to obtain its approbation

and concurrence, before any ordinance was published, to which the people were required to conform. 2. Under the second race of kings, every new law was reduced into proper form by the chancellor of the kingdom, was proposed by him to the people, and, when enacted, was committed to him to be kept among the public records, that he might give authentic copies of it to all who should demand them. Hincm. de Ord. Palat. c. 16. Capitul. Car. Calv. tit. xiv. § 11, tit. xxxiii. The chancellor presided in the parliament of Paris at its first institution. Encyclopédie, tom. iii. art. *Chancelier*, p. 88. It was, therefore, natural for the king to continue to employ him in his ancient functions of framing, taking into his custody, and publishing the ordinances which were issued. To an ancient copy of the Capitularia of Charlemagne, the following words are subjoined: "Anno tertio clementissimi domini nostri Caroli Augusti, sub ipso anno, hæc facta Capitula sunt, et consignata Stephano comiti, ut hæc manifesta faceret Parisiis mallo publico, et illa legere faceret coram scabineis, quod ita et fecit, et omnes in uno consenserunt, quod ipsi voluissent observare usque in posterum, etiam omnes scabinei, episcopi, abbates, comites, manu propria subter signaverunt." Bouquet, Recueil, tom. v. p. 663. *Mallus* signifies not only the public assembly of the nation, but the court of justice held by the comes, or missus dominicus. *Scabinei* were the judges, or the assessors of the judges in that court. Here, then, seems to be a very early instance, not only of laws being published in a court of justice, but of their being verified or confirmed by the subscription of the judges. If this was the common practice, it naturally introduced the verifying of edicts in the parliament of Paris. But this conjecture I propose with that diffidence, which I have felt in all my reasonings concerning the laws and institutions of foreign nations. 3. This su-

preme court of justice in France was dignified with the appellation of parliament, the name by which the general assembly of the nation was distinguished towards the close of the second race of kings; and men, both in reasoning and in conduct, were wonderfully influenced by the similarity of names. The preserving the ancient names of the magistrates established while the republican government subsisted in Rome, enabled Augustus and his successors to assume new powers with less observation and greater ease. The bestowing the same name in France upon two courts, which were extremely different, contributed not a little to confound their jurisdictions and functions.

All these circumstances concurred in leading the kings of France to avail themselves of the parliament of Paris as the instrument of reconciling the people to the exercise of legislative authority by the crown. The French, accustomed to see all new laws examined and authorized before they were published, did not sufficiently distinguish between the effect of performing this in the national assembly, or in a court appointed by the king. But as that court was composed of respectable members, and who were well skilled in the laws of their country, when any new edict received its sanction, that was sufficient to dispose the people to submit to it.

When the practice of *verifying* and *registering* the royal edicts in the parliament of Paris became common, the parliament contended that this was necessary in order to give them legal authority. It was established as a fundamental maxim in French jurisprudence, that no law could be published in any other manner; that without this formality no edict or ordinance could have any effect; that the people were not bound to obey it, and ought not to consider it as an edict or ordinance, until it was verified in the supreme court, after free

deliberation. Roche-flavin des Parlemens de France, 4to, Gen. 1621, p. 921. The parliament, at different times, hath, with great fortitude and integrity, opposed the will of their sovereigns; and, notwithstanding their repeated and peremptory requisitions and commands, hath refused to verify and publish such edicts as it conceived to be oppressive to the people, or subversive of the constitution of the kingdom. Roche-flavin reckons, that, between the year 1562 and the year 1589, the parliament refused to verify more than a hundred edicts of the kings. Ibid. 925. Many instances of the spirit and constancy with which the parliaments of France opposed pernicious laws, and asserted their own privileges, are enumerated by Limnæus in his Notitiæ Regni Franciæ, lib. i. c. 9, p. 224.

But the power of the parliament to maintain and defend this privilege bore no proportion to its importance, or to the courage with which the members asserted it. When any monarch was determined that an edict should be carried into execution, and found the parliament inflexibly resolved not to verify or publish it, he could easily supply this defect by the plenitude of his regal power. He repaired to the parliament in person, he took possession of his seat of justice, and commanded the edict to be read, verified, registered, and published in his presence. Then, according to another maxim of French law, the king himself being present, neither the parliament, nor any magistrate whatever, can exercise any authority, or perform any function. "Adveniente principe, cessat magistratus." Roche-flavin, ibid. pp. 928, 929. Encyclopédie, tom. ix. art. *Lit. de Justice*, p. 581. Roche-flavin mentions several instances of kings who actually exerted this prerogative, so fatal to the residue of the rights and liberties transmitted to the French by their ancestors. Pasquier pro-

duces some instances of the same kind. Rech. p. 61. Limnæus enumerates many other instances; but the length to which this note has swelled prevents me from inserting them at length, though they tend greatly to illustrate this important article in the French history, p. 245. Thus, by an exertion of prerogative, which, though violent, seems to be constitutional, and is justified by innumerable precedents, all the efforts of the parliament to limit and control the king's legislative authority are rendered ineffectual.

I have not attempted to explain the constitution or jurisdiction of any parliament in France but that of Paris. All of them are formed upon the model of that most ancient and respectable tribunal, and all my observations concerning it will apply with full force to them.

Note XLI.— Sect. III. p. 205.

The humiliating posture in which a great emperor implored absolution is an event so singular, that the words in which Gregory himself describes it merit a place here, and convey a striking picture of the arrogance of that pontiff: "Per triduum, ante portam castri, deposito omni regio cultu, miserabiliter, utpote discalceatus, et laneis indutus, persistens, non prius cum multo fletu apostolicæ miserationis auxilium et consolationem implorari destitit, quam omnes qui ibi aderant, et ad quos rumor ille pervenit, ad tantam pietatem, et compassionis misericordiam movit, ut pro eo multis precibus et lacrymis intercedentes, omnes quidem insolitam nostræ mentis duritiem mirarentur; nonnulli vero in nobis non apostolicæ sedis gravitatem, sed quasi tyrannicæ feritatis crudelitatem esse clamârunt." Epist. Gregor. ap. Memorie della Contessa Matilda da Fran. Mar. Fiorentini, Lucca, 1756, vol. i. p. 174.

NOTE XLII. — Sect. III. p. 216.

As I have endeavored in the history to trace the various steps in the progress of the constitution of the empire, and to explain the peculiarities in its policy very fully, it is not necessary to add much by way of illustration. What appears to be of any importance, I shall range under distinct heads.

1. With respect to the power, jurisdiction, and revenue of the emperors. A very just idea of these may be formed by attending to the view which Pfeffel gives of the rights of the emperors at two different periods. The first at the close of the Saxon race, A. D. 1024. These, according to his enumeration, were the right of conferring all the great ecclesiastical benefices in Germany; of receiving the revenues of them during a vacancy; of mortmain, or of succeeding to the effects of ecclesiastics who died intestate. The right of confirming or of annulling the elections of the popes. The right of assembling councils, and of appointing them to decide concerning the affairs of the Church. The right of conferring the title of king upon their vassals. The right of granting vacant fiefs. The right of receiving the revenues of the empire, whether arising from the imperial domains, from imposts and tolls, from gold or silver mines, from the taxes paid by the Jews, or from forfeitures. The right of governing Italy as its proper sovereigns. The right of erecting free cities, and of establishing fairs in them. The right of assembling the diets of the empire, and of fixing the time of their duration. The right of coining money, and of conferring that privilege on the states of the empire. The right of administering both high and low justice within the territories of the different states. Abrégé, p. 160. The other period is at the extinction of the emperors

of the families of Luxemburg and Bavaria, A. D. 1437 According to the same author, the imperial prerogatives at that time were the right of conferring all dignities and titles, except the privilege of being a state of the empire. The right of *preces primariæ*, or of appointing once during their reign a dignitary in each chapter or religious house. The right of granting dispensations with respect to the age of majority. The right of erecting cities, and of conferring the privilege of coining money. The right of calling the meetings of the diet, and of presiding in them. Abrégé, &c. p. 507. It were easy to show that Mr. Pfeffel is well founded in all these assertions, and confirm them by the testimony of the most respectable authors. In the one period the emperors appear as mighty sovereigns with extensive prerogatives; in the other, as the heads of a confederacy with very limited powers.

The revenues of the emperors decreased still more than their authority. The early emperors, and particularly those of the Saxon line, besides their great patrimonial or hereditary territories, possessed an extensive domain both in Italy and Germany, which belonged to them as emperors. Italy belonged to the emperors as their proper kingdom, and the revenues which they drew from it were very considerable. The first alienations of the imperial revenue were made in that country. The Italian cities having acquired wealth, and aspiring at independence, purchased their liberty from different emperors, as I have observed, Note XV. The sums which they paid, and the emperors with whom they concluded these bargains, are mentioned by Casp. Klockius de Ærario, Norimb. 1671, p. 85, &c. Charles IV. and his son Wenceslaus dissipated all that remained of the Italian branch of the domain. The German domain lay chiefly upon the banks of the Rhine, and was under

the government of the counts palatine. It is not easy to mark out the boundaries, or to estimate the value, of this ancient domain, which has been so long incorporated with the territories of different princes. Some hints with respect to it may be found in the glossary of Speidelius, which he has entitled Speculum Juridico-Philologico-Politico-Historicum Observationum, &c., Norim. 1673, vol. i. pp. 679, 1045. A more full account of it is given by Klockius de Ærario, p. 84. Besides this, the emperors possessed considerable districts of land lying intermixed with the estates of the dukes and barons. They were accustomed to visit these frequently, and drew from their vassals in each what was sufficient to support their court during the time of their residence among them. Annalistæ, ap. Struv. tom. i. p. 611. A great part of these detached possessions was seized by the nobles during the long interregnum, or during the wars occasioned by the contests between the emperors and the court of Rome. At the same time that such encroachments were made on the fixed or territorial property of the emperors, they were robbed almost entirely of their casual revenues. The princes and barons appropriating to themselves taxes and duties of every kind, which had usually been paid to them. Pfeffel, Abrégé, p. 374. The profuse and inconsiderate ambition of Charles IV. squandered whatever remained of the imperial revenues after so many defalcations. He, in the year 1376, in order to prevail with the electors to choose his son Wenceslaus king of the Romans, promised each of them a hundred thousand crowns. But being unable to pay so large a sum, and eager to secure the election to his son, he alienated to the three ecclesiastical electors, and to the count palatine, such countries as still belonged to the imperial domain on the banks of the Rhine, and likewise made over to

them all the taxes and tolls then levied by the emperors in that district. Trithemius, and the author of the Chronicle of Magdeburg, enumerate the territories and taxes which were thus alienated, and represent this as the last and fatal blow to the imperial authority. Struv. Corp. vol. i. p. 437. From that period the shreds of the ancient revenues possessed by the emperors have been so inconsiderable, that, in the opinion of Speidelius, all that they yield would be so far from defraying the expense of supporting their household, that they would not pay the charge of maintaining the posts established in the empire. Speidelii Speculum, &c. vol. i. p. 680. These funds, inconsiderable as they were, continued to decrease. Granvelle, the minister of Charles V., asserted in the year 1546, in presence of several of the German princes, that his master drew no money at all from the empire. Sleid. History of the Reformation, Lond. 1689, p. 372. The same is the case at present. Traité du Droite Publique de l'Empire, par M. le Coq. de Villeray, p. 55. From the reign of Charles IV., whom Maximilian called the "pest of the empire," the emperors have depended entirely on their hereditary dominions as the chief and almost the only source of their power, and even of their subsistence.

2. The ancient mode of electing the emperors, and the various changes which it underwent, require some illustration. The imperial crown was originally attained by election, as well as those of most monarchies in Europe. An opinion long prevailed among the antiquaries and public lawyers of Germany, that the right of choosing the emperors was vested in the archbishops of Mentz, Cologne, and Treves, the king of Bohemia, the duke of Saxony, the marquis of Brandenburg, and the count palatine of the Rhine, by an edict of Otho III., confirmed by Gregory V. about the year 996. But the

whole tenor of history contradicts this opinion. It appears that, from the earliest period in the history of Germany, the person who was to reign over all was elected by the suffrage of all. Thus Conrad I. was elected by all the people of the Franks, say some annalists; by all the princes and chief men, say others; by all the nations, say others. See their words, Struv. Corp. 211. Conringuis de German. Imper. Repub. Acroamata Sex. Ebroduni, 1654, p. 103. In the year 1024, posterior to the supposed regulations of Otho III., Conrad II. was elected by all the chief men, and his election was approved and confirmed by the people. Struv. Corp. 284. At the election of Lotharius II., A. D. 1125, sixty thousand persons of all ranks were present. He was named by the chief men, and their nomination was approved by the people. Struv. ibid. p. 357. The first author who mentions the seven electors is Martinus Polonus, who flourished in the reign of Frederick II., which ended A. D. 1250. We find that, in all the ancient elections to which I have referred, the princes of the greatest power and authority were allowed by their countrymen to name the person whom they wished to appoint emperor, and the people approved or disapproved of their nomination. This privilege of voting first is called by the German lawyers the right of *prætaxation.* Pfeffel, Abrégé, p. 316. This was the first origin of the exclusive right which the electors acquired. The electors possessed the most extensive territories of any princes in the empire; all the great offices of the state were in their hands by hereditary right; as soon as they obtained or engrossed so much influence in the election as to be allowed the right of prætaxation, it was vain to oppose their will, and it even became unnecessary for the inferior ecclesiastics and barons to attend, when they had no other function but that of confirming the deed of these

more powerful princes by their assent. During times of turbulence, the subordinate members of the Germanic body could not resort to the place of election without a retinue of armed vassals, the expense of which they were obliged to defray out of their own revenues; and finding their attendance to be unnecessary, they were unwilling to waste them to no purpose. The rights of the seven electors were supported by all the descendants and allies of their powerful families, who shared in the splendor and influence which they enjoyed by this distinguishing privilege. Pfeffel, Abrégé, p. 376. The seven electors were considered as the representatives of all the orders which composed the highest class of German nobility. There were three archbishops, chancellors of the three great districts into which the empire was anciently divided, one king, one duke, one marquis, and one count. All these circumstances contributed to render the introduction of this considerable innovation into the constitution of the Germanic body extremely easy. Everything of importance, relating to this branch of the political state of the empire, is well illustrated by Onuphrius Panvanius, an Augustinian monk of Verona, who lived in the reign of Charles V His treatise, if we make some allowance for that partiality which he expresses in favor of the powers which the popes claimed in the empire, has the merit of being one of the first works in which a controverted point in history is examined with critical precision, and with a proper attention to that evidence which is derived from records, or the testimony of contemporary historians. It is inserted by Goldastus in his Politica Imperialia, p. 2.

As the electors have engrossed the sole right of choosing the emperors, they have assumed likewise that of deposing them. This high power the electors have not only presumed to claim, but have ventured, in more than

one instance, to exercise. In the year 1298, a part of the electors deposed Adolphus of Nassau, and substituted Albert of Austria in his place. The reasons on which they found their sentence show that this deed flowed from factious, not from public-spirited motives. Struv. Corp. vol. i. 540. In the first year of the fifteenth century, the electors deposed Wenceslaus, and placed the imperial crown on the head of Rupert, elector palatine. The act of deposition is still extant. Goldasti Constit. vol. i. 379. It is pronounced in the name and by the authority of the electors, and confirmed by several prelates and barons of the empire, who were present. These exertions of the electoral power demonstrate that the imperial authority was sunk very low.

The other privileges of the electors, and the rights of the electoral college, are explained by the writers on the public law in Germany.

3. With respect to the diets, or general assemblies of the empire, it would be necessary, if my object were to write a particular history of Germany, to enter into a minute detail concerning the forms of assembling them, the persons who have a right to be present, their division into several colleges or benches, the objects of their deliberation, the mode in which they carry on their debates or give their suffrages, and the authority of their decrees or recesses. But as my only object is to give the outlines of the constitution of the German empire, it will be sufficient to observe, that originally the diets of the empire were exactly the same with the assemblies of March and of May, held by the kings of France. They met at least once a year. Every freeman had a right to be present. They were assemblies in which a monarch deliberated with his subjects concerning their common interest. Arumæus de Comitiis Rom. German. Imperii, 4to, Jenæ, 1660, cap. 7, No. 20, &c. But when the

princes, dignified ecclesiastics, and barons, acquired territorial and independent jurisdiction, the diet became an assembly of the separate states, which formed the confederacy of which the emperor was head. While the constitution of the empire remained in its primitive form, attendance on the diets was a duty, like the other services due from feudal subjects to their sovereign, which the members were bound to perform in person; and if any member who had a right to be present in the diet neglected to attend in person, he not only lost his vote, but was liable to a heavy penalty. Arumæus de Comit. c. 5, No. 40. Whereas, from the time that the members of the diet became independent states, the right of suffrage was annexed to the territory or dignity, not to the person. The members, if they could not, or would not, attend in person, might send their deputies, as princes send ambassadors, and they were entitled to exercise all the rights belonging to their constituents. Ibid. No. 42, 46, 49. By degrees, and upon the same principle of considering the diet as an assembly of independent states, in which each confederate had the right of suffrage, if any member possessed more than one of those states or characters which entitle to a seat in the diet, he was allowed a proportional number of suffrages. Pfeffel, Abrégé, 622. From the same cause, the imperial cities, as soon as they became free, and acquired supreme and independent jurisdiction within their own territories, were received as members of the diet. The powers of the diet extend to everything relative to the common concern of the Germanic body, or that can interest or affect it as a confederacy. The diet takes no cognizance of the interior administration in the different states, unless that happens to disturb or threaten the general safety.

4. With respect to the imperial chamber, the jurisdic-

tion of which has been the great source of order and tranquillity in Germany, it is necessary to observe, that this court was instituted in order to put an end to the calamities occasioned by private wars in Germany. I have already traced the rise and progress of this practice, and pointed out its pernicious effects as fully as their extensive influence during the Middle Ages required. In Germany, private wars seem to have been more frequent, and productive of worse consequences, than in the other countries of Europe. There are obvious reasons for this. The nobility of Germany were extremely numerous, and the causes of their dissension multiplied in proportion. The territorial jurisdiction which the German nobles acquired was more complete than that possessed by their order in other nations. They became, in reality, independent powers, and they claimed all the privileges of that character. The long interregnum from A. D. 1256 to A. D. 1273 accustomed them to an uncontrolled license, and led them to forget that subordination which is necessary in order to maintain public tranquillity. At the time when the other monarchs of Europe began to acquire such an increase of power and revenues as added new vigor to their government, the authority and revenues of the emperors continued gradually to decline. The diets of the empire, which alone had authority to judge between such mighty barons, and power to enforce its decisions, met very seldom. Conring. Acroamata, p. 234. The diets, when they did assemble, were often composed of several thousand members, Chronic. Constant. ap. Struv. Corp. i. p. 546, and were tumultuary assemblies, ill qualified to decide concerning any question of right. The session of the diet continued only two or three days; Pfeffel, Abrégé, p. 244; so that they had no time to hear or discuss any cause that was in the smallest degree intricate.

Thus Germany was left, in some measure, without any court of judicature capable of deciding the contests between its more powerful members, or of repressing the evils occasioned by their private wars.

All the expedients which were employed in other countries of Europe, in order to restrain this practice, and which I have described, Note XXI., were tried in Germany with little effect. The confederacies of the nobles and of the cities, and the division of Germany into various circles, which I mentioned in that note, were found likewise insufficient. As a last remedy, the Germans had recourse to arbiters, whom they called *austregæ*. The barons and states in different parts of Germany joined in conventions, by which they bound themselves to refer all controversies that might arise between them to the determination of *austregæ*, and to submit to their sentences as final. These arbiters are named sometimes in the treaty of convention, an instance of which occurs in Ludewig, Reliquæ Manuscr. omnis Ævi, vol. ii. p. 212; sometimes they were chosen by mutual consent upon occasion of any contest that arose; sometimes they were appointed by neutral persons; and sometimes the choice was left to be decided by lot. Datt. de Pace Publica Imperii, lib. i. cap. 27, No. 60, &c. Speidelius, Speculum, &c. voc. *Austrag.* p. 95. Upon the introduction of this practice, the public tribunals of justice became in a great measure useless, and were almost entirely deserted.

In order to re-establish the authority of government, Maximilian I. instituted the imperial chamber at the period which I have mentioned. This tribunal consisted originally of a president, who was always a nobleman of the first order, and of sixteen judges. The president was appointed by the emperor, and the judges partly by him, and partly by the states, according to

forms which it is unnecessary to describe. A sum was imposed, with their own consent, on the states of the empire, for paying the salaries of the judges and officers in this court. The imperial chamber was established first at Frankfort on the Main. During the reign of Charles V it was removed to Spires, and continued in that city above a century and a half. It is now fixed at Wetzlar. This court takes cognizance of all questions concerning civil right between the states of the empire, and passes judgment in the last resort, and without appeal. To it belongs likewise the privilege of judging in criminal causes, which may be considered as connected with the preservation of the public peace. Pfeffel, Abrégé, 560.

All causes relating to points of feudal right or jurisdiction, together with such as respect the territories which hold of the empire in Italy, belong properly to the jurisdiction of the aulic council. This tribunal was formed upon the model of the ancient court of the palace instituted by the emperors of Germany. It depended not upon the states of the empire, but upon the emperor, he having the right of appointing at pleasure all the judges of whom it is composed. Maximilian, in order to procure some compensation for the diminution of his authority by the powers vested in the imperial chamber, prevailed on the diet, A. D. 1512, to give its consent to the establishment of the aulic council. Since that time it has been a great object of policy in the court of Vienna to extend the jurisdiction, and support the authority, of the aulic council, and to circumscribe and weaken those of the imperial chamber. The tedious forms and dilatory proceedings of the imperial chamber have furnished the emperors with pretexts for doing so. "Lites Spiræ," according to the witticism of a German lawyer, "spirant, sed nunquam expirant." Such delays

are unavoidable in a court composed of members named by many different states jealous of each other. Whereas the judges of the aulic council, depending upon one master, and being responsible to him alone, are more vigorous and decisive. Puffendorf, De Statu Imper. German. cap. v. § 20. Pfeffel, Abrégé, p. 581.

NOTE XLIII. — Sect. III. p. 219.

The description which I have given of the Turkish government is conformable to the accounts of the most intelligent travellers who have visited that empire. The Count de Marsigli, in his treatise concerning the military state of the Turkish empire, ch. vi., and the author of Observations on the Religion, Laws, Government, and Manners of the Turks, published at London, 1768, vol. i. p. 81, differ from other writers who have described the political constitution of that powerful monarchy. As they had opportunity, during their long residence in Turkey, to observe the order and justice conspicuous in several departments of administration, they seem unwilling to admit that it should be denominated a despotism. But when the form of government in any country is represented to be despotic, this does not suppose that the power of the monarch is continually exerted in acts of violence, injustice, and cruelty. Under political constitutions of every species, unless when some frantic tyrant happens to hold the sceptre, the ordinary administration of government must be conformable to the principles of justice, and, if not active in promoting the welfare of the people, cannot certainly have their destruction for its object. A state, in which the sovereign possesses the absolute command of a vast military force, together with the disposal of an extensive revenue; in which the people have no privileges, and no

part either immediate or remote in legislation; in which there is no body of hereditary nobility, jealous of their own rights and distinctions, to stand as an intermediate order between the prince and the people, cannot be distinguished by any name but that of a despotism. The restraints, however, which I have mentioned, arising from the *capiculy*, and from religion, are powerful. But they are not such as change the nature or denomination of the government. When a despotic prince employs an armed force to support his authority, he commits the supreme power to their hands. The prætorian bands in Rome dethroned, murdered, and exalted their princes, in the same wanton manner with the soldiery of the Porte at Constantinople. But notwithstanding this, the Roman emperors have been considered by all political writers as possessing despotic powers.

The author of Observations on the Religion, Laws, Government, and Manners of the Turks, in a preface to the second edition of his work, hath made some remarks on what is contained in this note, and in that part of the text to which it refers. It is with diffidence I set my opinion in opposition to that of a person who has observed the government of the Turks with attention, and has described it with abilities. But after a careful review of the subject, to me the Turkish government still appears of such a species as can be ranged in no class but that to which political writers have given the name of *despotism*. There is not in Turkey any constitutional restraint upon the will of the sovereign, or any barrier to circumscribe the exercise of his power, but the two which I have mentioned; one afforded by religion, the principle upon which the authority of the sultan is founded, the other by the army, the instrument which he must employ to maintain his power. The author represents the *ulema*, or body of the law, as an inter-

mediate order between the monarch and the people. Pref. p. 30. But whatever restraint the authority of the *ulema* may impose upon the sovereign, is derived from religion. The *moulahs*, out of whom the mufti and other chief officers of the law must be chosen, are ecclesiastics. It is as interpreters of the Koran or divine will that they are objects of veneration. The check, then, which they give to the exercise of arbitrary power is not different from one of those of which I took notice. Indeed, this restraint cannot be very considerable. The mufti, who is the head of the order, as well as every inferior officer of law, is named by the sultan, and is removable at his pleasure. The strange means employed by the *ulema* in 1746 to obtain the dismission of a minister whom they hated, is a manifest proof that they possess but little constitutional authority which can serve as a restraint upon the will of the sovereign. Observat. p. 92 of 2d edit. If the author's idea be just, it is astonishing that the *body of the law* should have no method of remonstrating against the errors of administration, but by setting fire to the capital.

The author seems to consider the *capiculy*, or soldiery of the Porte, neither as formidable instruments of the sultan's power, nor as any restraint upon the exercise of it. His reasons for this opinion are, that the number of the capiculy is small in proportion to the other troops which compose the Turkish armies, and that in time of peace they are undisciplined. Pref. 2d edit. p. 23, &c. But the troops stationed in a capital, though their number be not great, are always masters of the sovereign's person and power. The prætorian bands bore no proportion to the legionary troops in the frontier provinces. The soldiery of the Porte are more numerous, and must possess power of the same kind, and be equally formidable, sometimes to the sovereign, and oftener to the peo-

ple. However much the discipline of the janizaries may be neglected at present, it certainly was not so in that age to which alone my description of the Turkish government applies. The author observes, Pref. p. 29, that the janizaries never deposed any sultan of themselves, but that some form of law, true or false, has been observed, and that either the mufti, or some other minister of religion, has announced to the unhappy prince the law which renders him unworthy of the throne. Observ. p. 102. This will always happen. In every revolution, though brought about by military power, the deeds of the soldiery must be confirmed and carried into execution with the civil and religious formalities peculiar to the constitution.

This addition to the note may serve as a further illustration of my own sentiments, but is not made with an intention of entering into any controversy with the author of *Observations*, &c., to whom I am indebted for the obliging terms in which he has expressed his remarks upon what I had advanced. Happy were it for such as ventured to communicate their opinions to the world, if every animadversion upon them were conveyed with the same candid and liberal spirit. In one particular, however, he seems to have misapprehended what I meant. Pref. p. 17. I certainly did not mention his or Count Marsigli's long residence in Turkey as a circumstance which should detract from the weight of their authority. I took notice of it, in justice to my readers, that they might receive my opinion with distrust, as it differed from that of persons whose means of information were so far superior to mine.

Note XLIV. — Sect. III. p. 221.

The institution, the discipline, and privileges of the

janizaries are described by all the authors who give any account of the Turkish government. The manner in which enthusiasm was employed in order to inspire them with courage, is thus related by Prince Cantemir: "When Amurath I. had formed them into a body, he sent them to Haji Bektash, a Turkish saint, famous for his miracles and prophecies, desiring him to bestow on them a banner, to pray God for their success, and to give them a name. The saint, when they appeared in his presence, put the sleeve of his gown upon one of their heads, and said, Let them be called *Yengicheri*. Let their countenance be ever bright, their hands victorious, their swords keen; let their spear always hang over the heads of their enemies, and wherever they go, may they return with a shining face." History of the Ottoman Empire, p. 38. The number of janizaries at the first institution of the body was not considerable. Under Solyman, in the year 1521, they amounted to twelve thousand. Since that time their number has greatly increased. Marsigli, Etat, &c. ch. xvi. p. 68. Though Solyman possessed such abilities and authority as to restrain this formidable body within the bounds of obedience, yet its tendency to limit the power of the sultans was, even in that age, foreseen by sagacious observers. Nicolas Daulphinois, who accompanied M. d'Aramon, ambassador from Henry II. of France to Solyman, published an account of his travels, in which he describes and celebrates the discipline of the janizaries, but at the same time predicts that they would, one day, become formidable to their masters, and act the same part at Constantinople as the prætorian bands had done at Rome. Collection of Voyages from the Earl of Oxford's library, vol. i. p. 599.

NOTE XLV. — Sect. III. p. 223.

Solyman the Magnificent, to whom the Turkish historians have given the surname of *canuni*, or institutor of rules, first brought the finances and military establishment of the Turkish empire into a regular form. He divided the military force into the *capiculy*, or soldiery of the Porte, which was properly the standing army, and *serrataculy*, or soldiers appointed to guard the frontiers. The chief strength of the latter consisted of those who held timariots and ziams. These were portions of land granted to certain persons for life, in much the same manner as the military fiefs among the nations of Europe, in return for which military service was performed. Solyman, in his *Canun-Namé*, or book of regulations, fixed with great accuracy the extent of these lands in each province of his empire, appointed the precise number of soldiers each person who held a timariot or a ziam should bring into the field, and established the pay which they should receive while engaged in service. Count Marsigli and Sir Paul Rycaut have given extracts from this book of regulations, and it appears that the ordinary establishment of the Turkish army exceeded a hundred and fifty thousand men. When these were added to the soldiery of the Porte, they formed a military power greatly superior to what any Christian state could command in the sixteenth century. Marsigli, Etat Militaire, &c. p. 136. Rycaut's State of the Ottoman Empire, book iii. ch. ii. As Solyman, during his active reign, was engaged so constantly in war, that his troops were always in the field, the *serrataculy* became almost equal to the janizaries themselves in discipline and valor.

It is not surprising, then, that the authors of the sixteenth century should represent the Turks as far superior to the Christians, both in the knowledge and in the prac-

tice of the art of war. Guicciardini informs us, that the Italians learned the art of fortifying towns from the Turks. Histor. lib. xv. p. 266. Busbequius, who was ambassador from the Emperor Ferdinand to Solyman, and who had opportunity to observe the state both of the Christian and Turkish armies, published a discourse concerning the best manner of carrying on war against the Turks, in which he points out at great length the immense advantages which the infidels possessed with respect to discipline and military improvements of every kind. Busbequii Opera, edit. Elzevir, p. 393, &c. The testimony of other authors might be added, if the matter were in any degree doubtful.

Before I conclude these Proofs and Illustrations, I ought to explain the reason of two omissions in them; one of which it is necessary to mention on my own account, the other to obviate an objection to this part of the work.

In all my inquiries and disquisitions concerning the progress of government, manners, literature, and commerce, during the Middle Ages, as well as in my delineations of the political constitution of the different states of Europe at the opening of the sixteenth century, I have not once mentioned M. de Voltaire, who, in his *Essai sur l'Histoire Générale*, has reviewed the same period, and has treated of all these subjects. This does not proceed from inattention to the works of that extraordinary man, whose genius, no less enterprising than universal, has attempted almost every different species of literary composition. In many of these he excels. In all, if he had left religion untouched, he is instructive and agreeable But as he seldom imitates the example of modern historians in citing the authors from whom they derived their information, I could not, with propriety, appeal to

his authority in confirmation of any doubtful or unknown fact. I have often, however, followed him as my guide in these researches; and he has not only pointed out the facts with respect to which it was of importance to inquire, but the conclusions which it was proper to draw from them. If he had, at the same time, mentioned the books which relate these particulars, a great part of my labor would have been unnecessary, and many of his readers, who now consider him only as an entertaining and lively writer, would find that he is a learned and well-informed historian.

As to the other omission, every intelligent reader must have observed, that I have not entered, either in the historical part of this volume, or in the Proofs and Illustrations, into the same detail with respect to the ancient laws and customs of the British kingdoms, as concerning those of the other European nations. As the capital facts with regard to the progress of government and manners in their own country are known to most of my readers, such a detail appeared to me to be less essential. Such facts and observations, however, as were necessary towards completing my design in this part of the work, I have mentioned under the different articles which are the subjects of my disquisitions. The state of government in all the nations of Europe having been nearly the same during several ages, nothing can tend more to illustrate the progress of the English constitution than a careful inquiry into the laws and customs of the kingdoms on the Continent. This source of information has been too much neglected by the English antiquaries and lawyers. Filled with admiration of that happy constitution now established in Great Britain, they have been more attentive to its forms and principles than to the condition and ideas of remote times, which in almost every particular differ from the present. While engaged in perusing the

laws, charters, and early historians of the Continental kingdoms, I have often been led to think that an attempt to illustrate the progress of English jurisprudence and policy by a comparison with those of other kingdoms in a similar situation, would be of great utility, and might throw much light on some points which are now obscure, and decide others which have been long controverted.

HISTORY OF THE REIGN

OF THE

EMPEROR CHARLES THE FIFTH.

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BOOK I.

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CHARLES V. was born at Ghent on the 24th day of February, in the year 1500. His father, Philip the Handsome, archduke of Austria, was the son of the Emperor Maximilian, and of Mary, the only

child of Charles the Bold, the last prince of the house of Burgundy. His mother, Joanna, was the second daughter of Ferdinand, king of Aragon, and of Isabella, queen of Castile.

A long train of fortunate events had opened the way for this young prince to the inheritance of more extensive dominions than any European monarch since Charlemagne had possessed. Each of his ancestors had acquired kingdoms or provinces, towards which their prospect of succession was extremely remote. The rich possessions of Mary of Burgundy had been destined for another family, she having been contracted by her father to the only son of Louis XI. of France; but that capricious monarch, indulging his hatred to her family, chose rather to strip her of part of her territories by force, than to secure the whole by marriage; and by this misconduct, fatal to his posterity, he threw all the Netherlands and Franche Comté into the hands of a rival. Isabella, the daughter of John II. of Castile, far from having any prospect of that noble inheritance which she transmitted to her grandson, passed the early part of her life in obscurity and indigence. But the Castilians, exasperated against her brother, Henry IV.; an ill-advised and vicious prince, publicly charged him with impotence and his queen with adultery. Upon his demise, rejecting Joanna, whom Henry had uniformly, and even on his death-bed, owned to be his lawful daughter, and whom an assembly of the states had acknowledged to be

the heir of his kingdom, they obliged her to retire into Portugal, and placed Isabella on the throne of Castile. Ferdinand owed the crown of Aragon to the unexpected death of his elder brother, and acquired the kingdoms of Naples and Sicily by violating the faith of treaties and disregarding the ties of blood. To all these kingdoms Christopher Columbus, by an effort of genius and of intrepidity the boldest and most successful that is recorded in the annals of mankind, added a new world, the wealth of which became one considerable source of the power and grandeur of the Spanish monarchs.

Don John, the only son of Ferdinand and Isabella, and their eldest daughter, the queen of Portugal, being cut off, without issue, in the flower of youth, all their hopes centred in Joanna and her posterity. But as her husband, the archduke, was a stranger to the Spaniards, it was thought expedient to invite him into Spain, that, by residing among them, he might accustom himself to their laws and manners; and it was expected that the cortes, or assembly of states, whose authority was then so great in Spain that no title to the crown was reckoned valid unless it received their sanction, would acknowledge his right of succession, together with that of the infanta, his wife. Philip and Joanna, passing through France in their way to Spain, were entertained in that kingdom with the utmost magnificence. The archduke did homage to Louis XII. for the earldom of Flanders,

and took his seat as a peer of the realm in the parliament of Paris. They were received in Spain with every mark of honor that the parental affection of Ferdinand and Isabella, or the respect of their subjects, could devise; and their title to the crown was soon after acknowledged by the cortes of both kingdoms.

But amidst these outward appearances of satisfaction and joy, some secret uneasiness preyed upon the mind of each of these princes. The stately and reserved ceremonial of the Spanish court was so burdensome to Philip, a prince, young, gay, affable, fond of society and of pleasure, that he soon began to express a desire of returning to his native country, the manners of which were more suited to his temper. Ferdinand, observing the declining health of his queen, with whose life he knew that his right to the government of Castile must cease, easily foresaw, that a prince of Philip's disposition, and who already discovered an extreme impatience to reign, would never consent to his retaining any degree of authority in that kingdom; and the prospect of this diminution of his power awakened the jealousy of that ambitious monarch.

Isabella beheld, with the sentiments natural to a mother, the indifference and neglect with which the archduke treated her daughter, who was destitute of those beauties of person, as well as those accomplishments of mind, which fix the affections of a husband. Her understanding, always weak,

was often disordered. She doated on Philip with such an excess of childish and indiscreet fondness as excited disgust rather than affection. Her jealousy, for which her husband's behavior gave her too much cause, was proportioned to her love, and often broke out in the most extravagant actions. Isabella, though sensible of her defects, could not help pitying her condition, which was soon rendered altogether deplorable by the archduke's abrupt resolution of setting out in the middle of winter for Flanders, and of leaving her in Spain. Isabella entreated him not to abandon his wife to grief and melancholy, which might prove fatal to her, as she was near the time of her delivery. Joanna conjured him to put off his journey for three days only, that she might have the pleasure of celebrating the festival of Christmas in his company. Ferdinand, after representing the imprudence of his leaving Spain before he had time to become acquainted with the genius, or to gain the affections, of the people who were one day to be his subjects, besought him, at least, not to pass through France, with which kingdom he was then at open war. Philip, without regarding either the dictates of humanity or the maxims of prudence, persisted in his purpose; and on the 22d of December set out for the Low Countries, by the way of France.[1]

From the moment of his departure, Joanna sunk

[1] Petri Martyris Anglerii Epistolæ, 250, 253.

into a deep and sullen melancholy,[2] and while she was in that situation bore Ferdinand, her second son, for whom the power of his brother Charles afterwards procured the kingdoms of Hungary and Bohemia, and to whom he at last transmitted the imperial sceptre. Joanna was the only person in Spain who discovered no joy at the birth of this prince. Insensible to that, as well as to every other pleasure, she was wholly occupied with the thoughts of returning to her husband; nor did she in any degree recover tranquillity of mind, until she arrived at Brussels next year.[3] [1504.]

Philip, in passing through France, had an interview with Louis XII., and signed a treaty with him, by which he hoped that all the differences between France and Spain would have been finally terminated. But Ferdinand, whose affairs, at that time, were extremely prosperous in Italy, where the superior genius of Gonsalvo de Cordova, the great captain, triumphed on every occasion over the arms of France, did not pay the least regard to what his son-in-law had concluded, and carried on hostilities with greater ardor than ever.

From this time Philip seems not to have taken any part in the affairs of Spain, waiting in quiet till the death either of Ferdinand or of Isabella should open the way to one of their thrones. The latter of these events was not far distant. The untimely death of her son and eldest daughter

[2] Petri Martyris Anglerii Epistolæ, 255.

[3] Mariana, lib. 27, c. 11, 14. Fléchier, Vie de Ximén. i. 191.

had made a deep impression on the mind of Isabella; and as she could derive but little consolation for the losses which she had sustained either from her daughter Joanna, whose infirmities daily increased, or from her son-in-law, who no longer preserved even the appearance of a decent respect towards that unhappy princess, her spirits and health began gradually to decline, and after languishing some months, she died at Medina del Campo, on the 26th of November, 1504. She was no less eminent for virtue than for wisdom; and whether we consider her behavior as a queen, as a wife, or as a mother, she is justly entitled to the high encomiums bestowed upon her by the Spanish historians.[4]

A few weeks before her death, she made her last will, and being convinced of Joanna's incapacity to assume the reins of government into her own hands, and having no inclination to commit them to Philip, with whose conduct she was extremely dissatisfied, she appointed Ferdinand regent or administrator of the affairs of Castile, until her grandson Charles should attain the age of twenty. She bequeathed to Ferdinand likewise one half of the revenues which should arise from the Indies, together with the grand masterships of the three military orders; dignities which rendered the person who possessed them almost independent, and which Isabella had, for that reason,

[4] P. Mart. Ep. 279.

annexed to the crown.[5] But before she signed a deed so favorable to Ferdinand, she obliged him to swear, that he would not, by a second marriage, or by any other means, endeavor to deprive Joanna or her posterity of their right of succession to any of his kingdoms.[6]

Immediately upon the queen's death, Ferdinand resigned the title of king of Castile, and issued orders to proclaim Joanna and Philip the sovereigns of that kingdom. But, at the same time, he assumed the character of regent, in consequence of Isabella's testament; and not long after, he prevailed on the cortes of Castile to acknowledge his right to that office. This, however, he did not procure without difficulty, nor without discovering such symptoms of alienation and disgust among the Castilians as filled him with great uneasiness. The union of Castile and Aragon for almost thirty years had not so entirely extirpated the ancient and hereditary enmity which subsisted between the natives of these kingdoms, that the Castilian pride could submit, without murmuring, to the government of a king of Aragon. Ferdinand's own character, with which the Castilians were well acquainted, was far from rendering his authority desirable. Suspicious, discerning, severe, and parsimonious, he was accustomed to observe the most minute actions of his subjects with a

[5] P. Martyr. Ep. 277. Mar. Hist. lib. 28, c. 11. Ferreras, Hist. Génér. d'Espagne, tom. viii. 263.

[6] Mar. Hist. lib. 28, c. 14.

jealous attention, and to reward their highest services with little liberality; and they were now deprived of Isabella, whose gentle qualities, and partiality to her Castilian subjects, often tempered his austerity, or rendered it tolerable. The maxims of his government were especially odious to the grandees; for that artful prince, sensible of the dangerous privileges conferred upon them by the feudal institutions, had endeavored to curb their exorbitant power,[7] by extending the royal jurisdiction, by protecting their injured vassals, by increasing the immunities of cities, and by other measures equally prudent. From all these causes a formidable party among the Castilians united against Ferdinand, and though the persons who composed it had not hitherto taken any public step in opposition to him, he plainly saw, that, upon the least encouragement from their new king, they would proceed to the most violent extremities.

There was no less agitation in the Netherlands upon receiving the accounts of Isabella's death, and of Ferdinand's having assumed the government of Castile. Philip was not of a temper tamely to suffer himself to be supplanted by the ambition of his father-in-law. If Joanna's infirmities, and the nonage of Charles, rendered them incapable of government, he, as a husband, was the proper guardian of his wife, and, as a father, the natural tutor of his son. Nor was it sufficient to oppose to these just rights, and to the inclination of the

[7] Marian. lib. 28, c. 12.

people of Castile, the authority of a testament, the genuineness of which was perhaps doubtful, and its contents to him appeared certainly to be iniquitous. A keener edge was added to Philip's resentment, and new vigor infused into his councils, by the arrival of Don John Manuel. He was Ferdinand's ambassador at the imperial court, but, upon the first notice of Isabella's death, repaired to Brussels, flattering himself, that, under a young and liberal prince, he might attain to power and honors which he could never have expected in the service of an old and frugal master. He had early paid court to Philip, during his residence in Spain, with such assiduity as entirely gained his confidence; and, having been trained to business under Ferdinand, could oppose his schemes with equal abilities, and with arts not inferior to those for which that monarch was distinguished.[8]

By the advice of Manuel, ambassadors were despatched to require Ferdinand to retire into Aragon, and to resign the government of Castile to those persons whom Philip should intrust with it, until his own arrival in that kingdom. Such of the Castilian nobles as had discovered any dissatisfaction with Ferdinand's administration, were encouraged by every method to oppose it. At the same time a treaty was concluded with Louis XII., by which Philip flattered himself that he had secured the friendship and assistance of that monarch.

[8] Zurita, Anales de Aragon, tom. vi. p. 12.

Meanwhile, Ferdinand employed all the arts of address and policy, in order to retain the power of which he had got possession. By means of Conchillos, an Aragonian gentleman, he entered into a private negotiation with Joanna, and prevailed on that weak princess to confirm, by her authority, his right to the regency. But this intrigue did not escape the penetrating eye of Don John Manuel; Joanna's letter of consent was intercepted; Conchillos was thrown into a dungeon; she herself confined to an apartment in the palace, and all her Spanish domestics secluded from her presence.[9]

The mortification which the discovery of this intrigue occasioned to Ferdinand was much increased by his observing the progress which Philip's emissaries made in Castile. Some of the nobles retired to their castles; others to the towns in which they had influence; they formed themselves into confederacies, and began to assemble their vassals. Ferdinand's court was almost totally deserted; not a person of distinction but Ximenes, archbishop of Toledo, the duke of Alva, and the marquis of Denia, remaining there; while the houses of Philip's ambassadors were daily crowded with noblemen of the highest rank.

Exasperated at this universal defection, and mortified, perhaps, with seeing all his schemes defeated by a younger politician, Ferdinand resolved, in defiance of the law of nature and of decency, to deprive

[9] P. Mart. Ep. 287. Zurita, Anales, vi. p. 14.

his daughter and her posterity of the crown of Castile, rather than renounce the regency of that kingdom. His plan for accomplishing this was no less bold than the intention itself was wicked. He demanded in marriage Joanna, the supposed daughter of Henry IV., on the belief of whose illegitimacy Isabella's right to the crown of Castile was founded; and by reviving the claim of this princess, in opposition to which he himself had formerly led armies and fought battles, he hoped once more to get possession of the throne of that kingdom. But Emanuel, king of Portugal, in whose dominions Joanna resided at that time, having married one of Ferdinand's daughters by Isabella, refused his consent to that unnatural match; and the unhappy princess herself, having lost all relish for the objects of ambition by being long immured in a convent, discovered no less aversion to it.[10]

The resources, however, of Ferdinand's ambition were not exhausted. Upon meeting with a repulse in Portugal, he turned towards France, and sought in marriage Germaine de Foix, a daughter of the viscount of Narbonne, and of Mary, the sister of Louis XII. The war which that monarch had carried on against Ferdinand in Naples had been so unfortunate, that he listened with joy to a proposal which furnished him with an honorable pretence for concluding peace; and though no prince was ever more remarkable than Ferdinand for

[10] Sandov. Hist. of Civil Wars in Castile, Lond. 1655, p. 5. Zurita, Anales de Aragon, tom. vi. p. 213.

making all his passions bend to the maxims of interest, or become subservient to the purposes of ambition, yet so vehement was his resentment against his son-in-law, that the desire of gratifying it rendered him regardless of every other consideration. In order to be revenged of Philip, by detaching Louis from his interest, and in order to gain a chance of excluding him from his hereditary throne of Aragon, and the dominions annexed to it, he was ready once more to divide Spain into separate kingdoms, though the union of these was the great glory of his reign, and had been the chief object of his ambition; he consented to restore the Neapolitan nobles of the French faction to their possessions and honors; and submitted to the ridicule of marrying, in an advanced age, a princess of eighteen.[11]

The conclusion of this match, which deprived Philip of his only ally, and threatened him with the loss of so many kingdoms, gave him a dreadful alarm, and convinced Don John Manuel that there was now a necessity of taking other measures with regard to the affairs of Spain.[12] He accordingly instructed the Flemish ambassadors in the court of Spain to testify the strong desire which their master had of terminating all differences between him and Ferdinand in an amicable manner, and his willingness to consent to any conditions that would re-establish the friendship which ought to subsist

[11] P. Mart. Ep. 290, 292. Mariana, lib. 28, c. 16, 17.
[12] P. Mart. Ep. 293.

between a father and a son-in-law. Ferdinand, though he had made and broken more treaties than any prince of any age, was apt to confide so far in the sincerity of other men, or to depend so much upon his own address and their weakness, as to be always extremely fond of a negotiation. He listened with eagerness to the declarations, and soon concluded a treaty at Salamanca; in which it was stipulated, that the government of Castile should be carried on in the joint names of Joanna, of Ferdinand, and of Philip; and that the revenues of the crown, as well as the right of conferring offices, should be shared between Ferdinand and Philip, by an equal division.[13]

Nothing, however, was farther from Philip's thoughts than to observe this treaty. His sole intention in proposing it was to amuse Ferdinand, and to prevent him from taking any measures for obstructing his voyage into Spain. It had that effect. Ferdinand, sagacious as he was, did not for some time suspect his design; and though, when he perceived it, he prevailed on the king of France not only to remonstrate against the archduke's journey, but to threaten hostilities if he should undertake it; though he solicited the duke of Gueldres to attack his son-in-law's dominions in the Low Countries, Philip and his consort nevertheless set sail with a numerous fleet and a good body of land forces. They were obliged by a violent tempest to take shelter in England, where

[13] Zurita, Anales de Aragon, vi. 19. P. Mart. Ep. 293, 294.

Henry VII., in compliance with Ferdinand's solicitations, detained them upwards of three months:[14] at last they were permitted to depart, and, after a more prosperous voyage, they arrived in safety at Corunna in Galicia, nor durst Ferdinand attempt, as he once intended, to oppose their landing by force of arms. [1506.]

The Castilian nobles, who had been obliged hitherto to conceal or to dissemble their sentiments, now declared openly in favor of Philip. From every corner of the kingdom, persons of the highest rank, with numerous retinues of their vassals, repaired to their new sovereign. The treaty of Salamanca was universally condemned, and all agreed to exclude from the government of Castile a prince, who, by consenting to disjoin Aragon and Naples from that crown, discovered so little concern for its true interests. Ferdinand, meanwhile, abandoned by almost all the Castilians, disconcerted by their revolt, and uncertain whether he should peaceably relinquish his power, or take arms in order to maintain it, earnestly solicited an interview with his son-in-law, who, by the advice of Manuel, studiously avoided it. Convinced at last, by seeing the number and zeal of Philip's adherents daily increase, that it was vain to think of resisting such a torrent, Ferdinand consented, by treaty, to resign the regency of Castile into the hands of Philip, to retire into his hereditary dominions of Aragon, and to rest satisfied with the masterships of the military

[14] Ferrer. Hist. viii. 285.

orders, and that share of the revenue of the Indies which Isabella had bequeathed to him. Though an interview between the princes was no longer necessary, it was agreed to on both sides from motives of decency. Philip repaired to the place appointed with a splendid retinue of Castilian nobles, and a considerable body of armed men. Ferdinand appeared without any pomp, attended by a few followers mounted on mules, and unarmed. On that occasion, Don John Manuel had the pleasure of displaying before the monarch whom he had deserted the extensive influence which he had acquired over his new master; while Ferdinand suffered, in presence of his former subjects, the two most cruel mortifications which an artful and ambitious prince can feel; being at once overreached in conduct, and stripped of power.[15]

Not long after, he retired into Aragon; and hoping that some favorable accident would soon open the way to his return into Castile, he took care to protest, though with great secrecy, that the treaty concluded with his son-in-law, being extorted by force, ought to be deemed void of all obligation.[16]

Philip took possession of his new authority with a youthful joy. The unhappy Joanna, from whom he derived it, remained, during all these contests, under the dominion of a deep melancholy; she was

[15] Zurita, Anales de Aragon, vi. 64. Mar. lib. 28, c. 19, 20. P. Mart. Ep. 304, 305, &c.

[16] Zurita, Anales de Aragon, vi. p. 68. Ferrer. Hist. viii. 290.

seldom allowed to appear in public; her father, though he had often desired it, was refused access to her; and Philip's chief object was to prevail on the cortes to declare her incapable of government, that an undivided power might be lodged in his hands, until his son should attain to full age. But such was the partial attachment of the Castilians to their native princess, that, though Manuel had the address to gain some members of the cortes assembled at Valladolid, and others were willing to gratify their new sovereign in his first request, the great body of the representatives refused their consent to a declaration which they thought so injurious to the blood of their monarchs.[17] They were unanimous, however, in acknowledging Joanna and Philip queen and king of Castile, and their son Charles prince of Asturias.

This was almost the only memorable event during Philip's administration. A fever put an end to his life in the twenty-eighth year of his age, when he had not enjoyed the regal dignity, which he had been so eager to obtain, full three months.[18]

The whole royal authority in Castile ought, of course, to have devolved upon Joanna. But the shock occasioned by a disaster so unexpected as the death of her husband, completed the disorder of her understanding, and her incapacity for government. During all the time of Philip's sick

[17] Zurita, Anales de Aragon, vi. p. 75.

[18] Marian. lib. 28, c. 23. [1506.]

ness, no entreaty could prevail on her, though in the sixth month of her pregnancy, to leave him for a moment. When he expired, however, she did not shed one tear, or utter a single groan. Her grief was silent and settled. She continued to watch the dead body with the same tenderness and attention as if it had been alive,[19] and though at last she permitted it to be buried, she soon removed it from the tomb to her own apartment. There it was laid upon a bed of state, in a splendid dress; and having heard from some monk a legendary tale of a king who revived after he had been dead fourteen years, she kept her eyes almost constantly fixed on the body, waiting for the happy moment of its return to life. Nor was this capricious affection for her dead husband less tinctured with jealousy than that which she had borne to him when alive. She did not permit any of her female attendants to approach the bed on which his corpse was laid; she would not suffer any woman who did not belong to her family to enter the apartment; and rather than grant that privilege to a midwife, though a very aged one had been chosen on purpose, she bore the princess Catharine without any other assistance than that of her own domestics.[20]

A woman in such a state of mind was little capable of governing a great kingdom; and Joanna, who made it her sole employment to bewail the

[19] P. Mart. Ep. 316.

[20] Mar. Hist. lib. 29, c. 3, et. 5. P. Mart. Ep. 318, 324, 328, 332.

loss and to pray for the soul of her husband, would have thought her attention to public affairs an impious neglect of those duties which she owed to him. But though she declined assuming the administration herself, yet, by a strange caprice of jealousy, she refused to commit it to any other person; and no entreaty of her subjects could persuade her to name a regent, or even to sign such papers as were necessary for the execution of justice, and the security of the kingdom.

The death of Philip threw the Castilians into the greatest perplexity. It was necessary to appoint a regent, both on account of Joanna's frenzy and the infancy of her son; and as there was not among the nobles any person so eminently distinguished, either by superiority in rank or abilities, as to be called by the public voice to that high office, all naturally turned their eyes either towards Ferdinand or towards the Emperor Maximilian. The former claimed that dignity as administrator for his daughter, and by virtue of the testament of Isabella; the latter thought himself the legal guardian of his grandson, whom, on account of his mother's infirmities, he already considered as king of Castile. Such of the nobility as had lately been most active in compelling Ferdinand to resign the government of the kingdom, trembled at the thoughts of his being restored so soon to his former dignity. They dreaded the return of a monarch not apt to forgive, and who, to those defects with which they were already acquainted,

added that resentment which the remembrance of their behavior, and reflection upon his own disgrace, must naturally have excited. Though none of these objections lay against Maximilian, he was a stranger to the laws and manners of Castile; he had not either troops or money to support his pretensions, nor could his claim be admitted without a public declaration of Joanna's incapacity for government, an indignity to which, notwithstanding the notoriety of her distemper, the delicacy of the Castilians could not bear the thoughts of subjecting her.

Don John Manuel, however, and a few of the nobles, who considered themselves most obnoxious to Ferdinand's displeasure, declared for Maximilian, and offered to support his claim with all their interest. Maximilian, always enterprising and decisive in council, though feeble and dilatory in execution, eagerly embraced the offer. But a series of ineffectual negotiations was the only consequence of this transaction. The emperor, as usual, asserted his right in a high strain, promised a great deal, and performed nothing.[21]

A few days before the death of Philip, Ferdinand had set out for Naples, that, by his own presence, he might put an end, with greater decency, to the viceroyalty of the Great Captain, whose important services and cautious conduct did not screen him from the suspicions of his jealous master. Though an account of his son-in-law's death reached him at

[21] Mariana, lib. 29, c. 7. Zurita, Anales de Arag. vi. 93.

Porto-fino, in the territories of Genoa, he was so solicitous to discover the secret intrigues which he supposed the Great Captain to have been carrying on, and to establish his own authority on a firm foundation in the Neapolitan dominions, by removing him from the supreme command there, that rather than discontinue his voyage, he chose to leave Castile in a state of anarchy, and even to risk, by this delay, his obtaining possession of the government of that kingdom.[22]

Nothing but the great abilities and prudent conduct of his adherents could have prevented the bad effects of this absence. At the head of these was Ximenes, archbishop of Toledo, who, though he had been raised to that dignity by Isabella, contrary to the inclination of Ferdinand, and though he could have no expectation of enjoying much power under the administration of a master little disposed to distinguish him by extraordinary marks of attention, was nevertheless so disinterested as to prefer the welfare of his country before his own grandeur, and to declare that Castile could never be so happily governed as by a prince whom long experience had rendered thoroughly acquainted with its true interest. The zeal of Ximenes to bring over his countrymen to this opinion induced him to lay aside somewhat of his usual austerity and haughtiness. He condescended, on this occasion, to court the disaffected nobles, and employed address, as well as arguments, to persuade them. Ferdinand

[22] Zurita, Anales de Arag. vi. 85.

seconded his endeavors with great art; and by concessions to some of the grandees, by promises to others, and by letters full of complaisance to all, he gained many of his most violent opponents.[23] Though many cabals were formed, and some commotions were excited, yet when Ferdinand, after having settled the affairs of Naples, arrived in Castile, he entered upon the administration without opposition. The prudence with which he exercised his authority in that kingdom equalled the good fortune by which he had recovered it. By a moderate but steady administration, free from partiality and from resentment, he entirely reconciled the Castilians to his person, and secured to them, during the remainder of his life, as much domestic tranquillity as was consistent with the genius of the feudal government, which still subsisted among them in full vigor.[24]

Nor was the preservation of tranquillity in his hereditary kingdoms the only obligation which the Archduke Charles owed to the wise regency of his grandfather. It was his good fortune, during that period, to have very important additions made to the dominions over which he was to reign. On the coast of Barbary, Oran, and other conquests of no small value, were annexed to the crown of Castile by Cardinal Ximenes, who, with a spirit very uncommon in a monk, led in person a numerous army against the Moors of that country; and,

[23] Zurita, Anales de Arag. vi. 87, 94, 109.

[24] Mariana, lib. 29, c. 10.

with a generosity and magnificence still more singular, defrayed the whole expense of the expedition out of his own revenues.[25] In Europe, Ferdinand, under pretences no less frivolous than unjust, as well as by artifices the most shameful and treacherous, expelled John d'Albret, the lawful sovereign, from the throne of Navarre; and, seizing that kingdom, extended the limits of the Spanish monarchy from the Pyrenees on the one hand to the frontiers of Portugal on the other.[26]

It was not, however, the desire of aggrandizing the archduke which influenced Ferdinand in this, or in any other of his actions. He was more apt to consider that young prince as a rival, who might one day wrest out of his hands the government of Castile, than as a grandson, for whose interest he was intrusted with the administration. This jealousy soon begot aversion, and even hatred, the symptoms of which he was at no pains to conceal. Hence proceeded his immoderate joy when his young queen was delivered of a son, whose life would have deprived Charles of the crowns of Aragon, Naples, Sicily, and Sardinia; and upon the untimely death of that prince he discovered, for the same reason, an excessive solicitude to have other children. This impatience hastened, in all probability, the accession of Charles to the crown of Spain. Ferdinand, in order to procure a blessing, of which, from his advanced age, and the intemperance of his youth, he could have little prospect, had

[25] Mariana, lib. 29, c. 18. [26] Id. lib. 30, c. 11, 12, 18, 24.

recourse to his physicians, and by their prescription took one of those potions which are supposed to add vigor to the constitution, though they more frequently prove fatal to it. This was its effect on a frame so feeble and exhausted as that of Ferdinand; for though he survived a violent disorder which it at first occasioned, it brought on such an habitual languor and dejection of mind, as rendered him averse from any serious attention to public affairs, and fond of frivolous amusements, on which he had not hitherto bestowed much time.[27] Though he now despaired of having any son of his own, his jealousy of the archduke did not abate, nor could he help viewing him with that aversion which princes often bear to their successors. In order to gratify this unnatural passion, he made a will, appointing Prince Ferdinand, who, having been born and educated in Spain, was much beloved by the Spaniards, to be regent of all his kingdoms, until the arrival of the archduke his brother; and by the same deed he settled upon him the grand-mastership of the three military orders. The former of these grants might have put it in the power of the young prince to have disputed the throne with his brother; the latter would, in any event, have rendered him almost independent of him.

Ferdinand retained to the last that jealous love of power which was so remarkable through his whole life. Unwilling, even at the approach of

[27] Zurita, Anales de Arag. vi. 347. P. Mart. Ep. 531. Argensola, Anales de Aragon, lib. i. p. 4.

death, to admit a thought of relinquishing any portion of his authority, he removed continually from place to place, in order to fly from his distemper, or to forget it. Though his strength declined every day, none of his attendants durst mention his condition; nor would he admit his father-confessor, who thought such silence criminal and unchristian, into his presence. At last the danger became so imminent, that it could be no longer concealed. Ferdinand received the intimation with a decent fortitude; and touched, perhaps, with compunction at the injustice which he had done his grandson, or influenced by the honest remonstrances of Carvajal, Zapara, and Vargas, his most ancient and faithful councillors, who represented to him that, by investing Prince Ferdinand with the regency, he would infallibly entail a civil war on the two brothers, and by bestowing on him the grand-mastership of the military orders, would strip the crown of its noblest ornament and chief strength, he consented to alter his will with respect to both these particulars. By a new deed he left Charles the sole heir of all his dominions, and allotted to Prince Ferdinand, instead of that throne of which he thought himself almost secure, an inconsiderable establishment of fifty thousand ducats a year.[28] He died a few hours after signing this will, on the 23d day of January, 1516.

Charles, to whom such a noble inheritance descended by his death, was near the full age of six-

[28] Mar. Hist. lib. 30, c. ult. Zurita, Anales de Arag. vi. 401. P Mart. Ep. 565, 566. Argensola, Anales de Arag. lib. i. p. 11.

teen. He had hitherto resided in the Low Countries, his paternal dominions. Margaret of Austria, his aunt, and Margaret of York, the sister of Edward IV of England and widow of Charles the Bold, two princesses of great virtue and abilities, had the care of forming his early youth. Upon the death of his father, the Flemings committed the government of the Low Countries to his grandfather, the Emperor Maximilian, with the name rather than the authority of regent.[29] Maximilian made choice of William de Croy, lord of Chièvres, to superintend the education of the young prince, his grandson.[30] That nobleman possessed, in an eminent degree, the talents which fitted him for such

[29] Pontius Heuterus, Rerum Austriacarum, lib. xv. Lov. 1649, lib. vii. c. 2, p. 155.

[30] The French historians, upon the authority of M. de Bellay, Mém. p. 11, have unanimously asserted, that Philip, by his last will, having appointed the king of France to have the direction of his son's education, Louis XII., with a disinterestedness suitable to the confidence reposed in him, named Chièvres for that office. Even the President Hénault has adopted this opinion. Abrégé Chron. A. D. 1507. Varillas, in his usual manner, pretends to have seen Philip's testament. Pract. de l'Education des Princes, p. 16. But the Spanish, German, and Flemish historians concur in contradicting this assertion of the French authors. It appears from Heuterus, a contemporary Flemish historian of great authority, that Louis XII., by consenting to the marriage of Germaine de Foix with Ferdinand, had lost much of that confidence which Philip once placed in him; that his disgust was increased by the French king's giving in marriage to the count of Angoulême his eldest daughter, whom he had formerly betrothed to Charles. Heuter. Rer Austr. lib. v. 151. That the French, a short time before Philip's death, had violated the peace which subsisted between them and the Flemings, and Philip had complained of this injury, and was ready to resent it. Heuter. ibid. All these circumstances render it improbable that Philip,

an important office, and discharged the duties of it with great fidelity. Under Chièvres, Adrian of Utrecht acted as preceptor. This preferment, which opened his way to the highest dignities an ecclesiastic can attain, he owed not to his birth, for that was extremely mean; nor to his interest, for he was a stranger to the arts of a court; but to the opinion which his countrymen entertained of his learning. He was indeed no inconsiderable proficient in those frivolous sciences which, during several centuries, assumed the name of philosophy, and had published a commentary, which was highly esteemed, upon *The Book of Sentences*, a famous treatise of Petrus Lombardus, considered at that time as the standard system of metaphysical theology. But whatever

who made his will a few days before he died, Heuter. p. 152, should commit the education of his son to Louis XII. In confirmation of these plausible conjectures, positive testimony can be produced. It appears from Heuterus, that Philip, when he set out for Spain, had intrusted Chièvres both with the care of his son's education, and with the government of his dominions in the Low Countries. Heuter. lib. vii. p. 153. That an attempt was made, soon after Philip's death, to have the Emperor Maximilian appointed regent during the minority of his grandson; but this being opposed, Chièvres seems to have continued to discharge both the offices which Philip had committed to him. Heuter. ibid. 153, 155. That, in the beginning of the year 1508, the Flemings invited Maximilian to accept of the regency; to which he consented, and appointed his daughter Margaret, together with a council of Flemings, to exercise the supreme authority, when he himself should at any time be absent. He likewise named Chièvres as governor, and Adrian of Utrecht as preceptor to his son. Heut. ibid. 155, 157. What Heuterus relates with respect to this matter is confirmed by Moringus, in Vita Adriani apud Analecta Casp. Burmanni de Adriano, cap. 10; by Barlandus, Chronic. Brabant. ibid. p. 25; and by Haræus, Annal. Brab. vol. ii. 520, &c.

admiration these procured him in an illiterate age, it was soon found that a man accustomed to the retirement of a college, unacquainted with the world, and without any tincture of taste or elegance, was by no means qualified for rendering science agreeable to a young prince. Charles, accordingly, discovered an early aversion to learning, and an excessive fondness for those violent and martial exercises, to excel in which was the chief pride, and almost the only study, of persons of rank in that age. Chièvres encouraged this taste, either from a desire of gaining his pupil by indulgence, or from too slight an opinion of the advantages of literary accomplishments.[31] He instructed him, however, with great care in the arts of government; he made him study the history, not only of his own kingdoms, but of those with which they were connected; he accustomed him, from the time of his assuming the government of Flanders, in the year 1515, to attend to business; he persuaded him to peruse all papers relating to public affairs; to be present at the deliberations of his privy-councillors, and to propose to them himself those matters concerning which he required their opinion.[32] From such an education, Charles contracted habits of gravity and recollection which scarcely suited his time of life. The first openings

[31] Jovii Vita Adriani, p. 91. Struvii Corpus Hist. Germ. ii. 967. P. Heuter. Rer. Austr. lib. vii. c. 3, p. 157.

[32] Mémoires de Bellay, 8vo, Par. 1573, p. 11. P. Heuter. lib. viii. c. 1, p. 184.

of his genius did not indicate that superiority which its maturer age displayed.[33] He did not discover in his youth the impetuosity of spirit which commonly ushers in an active and enterprising manhood. Nor did his early obsequiousness to Chièvres, and his other favorites, promise that capacious and decisive judgment, which afterwards directed the affairs of one half of Europe. But his subjects, dazzled with the external accomplishments of a graceful figure and manly address, and viewing his character with that partiality which is always shown to princes during their youth, entertained sanguine hopes of his adding lustre to those crowns which descended to him by the death of Ferdinand.

The kingdoms of Spain, as is evident from the view which I have given of their political constitution, were at that time in a situation which required an administration no less vigorous than prudent. The feudal institutions, which had been introduced into all its different provinces by the Goths, the Suevi, and the Vandals, subsisted in great force. The nobles, who were powerful and warlike, had long possessed all the exorbitant privileges which these institutions vested in their order. The cities in Spain were more numerous and more considerable than the genius of feudal government, naturally unfavorable to commerce and to regular police, seemed to admit. The personal rights and political influence which the inhabitants of these cities had

[33] P. Martyr, Ep. 569, 655.

acquired were extensive. The royal prerogative, circumscribed by the privileges of the nobility and by the pretensions of the people, was confined within very narrow limits. Under such a form of government, the principles of discord were many; the bond of union was extremely feeble; and Spain felt not only all the inconveniences occasioned by the defects in the feudal system, but was exposed to disorders arising from the peculiarities in its own constitution.

During the long administration of Ferdinand, no internal commotion, it is true, had arisen in Spain. His superior abilities had enabled him to restrain the turbulence of the nobles, and to moderate the jealousy of the commons. By the wisdom of his domestic government, by the sagacity with which he conducted his foreign operations, and by the high opinion that his subjects entertained of both, he had preserved among them a degree of tranquillity greater than was natural to a constitution in which the seeds of discord and disorder were so copiously mingled. But, by the death of Ferdinand, these restraints were at once withdrawn; and faction and discontent, from being long repressed, were ready to break out with fiercer animosity.

In order to prevent these evils, Ferdinand had in his last will taken a most prudent precaution, by appointing Cardinal Ximenes, archbishop of Toledo, to be sole regent of Castile, until the arrival of his grandson in Spain. The singular character of

this man, and the extraordinary qualities which marked him out for that office at such a juncture, merit a particular description. He was descended of an honorable, not of a wealthy family; and the circumstances of his parents, as well as his own inclinations, having determined him to enter into the Church, he early obtained benefices of great value, and which placed him in the way of the highest preferment. All these, however, he renounced at once; and, after undergoing a very severe novitiate, assumed the habit of St. Francis in a monastery of Observantine friars, one of the most rigid orders in the Romish Church. There he soon became eminent for his uncommon austerity of manners, and for those excesses of superstitious devotion which are the proper characteristics of the monastic life. But, notwithstanding these extravagances, to which weak and enthusiastic minds alone are usually prone, his understanding, naturally penetrating and decisive, retained its full vigor, and acquired him such great authority in his own order, as raised him to be their provincial. His reputation for sanctity soon procured him the office of father-confessor to Queen Isabella, which he accepted with the utmost reluctance. He preserved in a court the same austerity of manners which had distinguished him in the cloister. He continued to make all his journeys on foot; he subsisted only upon alms; his acts of mortification were as severe as ever, and his penances as rigorous. Isabella, pleased with her choice, conferred on him, not long

after, the archbishopric of Toledo, which, next to the papacy, is the richest dignity in the Church of Rome. This honor he declined with the firmness which nothing but the authoritative injunction of the pope was able to overcome. Nor did this height of promotion change his manners. Though obliged to display in public that magnificence which became his station, he himself retained his monastic severity. Under his pontifical robes he constantly wore the coarse frock of St. Francis, the rents in which he used to patch with his own hands. He at no time used linen; but was commonly clad in hair-cloth. He slept always in his habit, most frequently on the ground, or on boards; rarely in a bed. He did not taste any of the delicacies which appeared at his table, but satisfied himself with that simple diet which the rule of his order prescribed.[34] Notwithstanding these peculiarities, so opposite to the manners of the world, he possessed a thorough knowledge of its affairs; and no sooner was he called by his station, and by the high opinion which Ferdinand and Isabella entertained of him, to take a principal share in the administration, than he displayed talents for business which rendered the fame of his wisdom equal to that of his sanctity. His political conduct, remarkable for the boldness and originality of all his plans, flowed from his real character, and partook both of its virtues and its defects. His extensive genius sug-

[34] Histoire de l'Administration du Card. Ximén. par Mich. Baudier, 4to, 1635, p. 13.

gested to him schemes vast and magnificent. Conscious of the integrity of his intentions, he pursued these with unremitting and undaunted firmness. Accustomed from his early youth to mortify his own passions, he showed little indulgence toward those of other men. Taught by his system of religion to check even his most innocent desires, he was the enemy of everything to which he could affix the name of elegance or pleasure. Though free from any suspicion of cruelty, he discovered in all his commerce with the world a severe inflexibility of mind, and austerity of character, peculiar to the monastic profession, and which can hardly be conceived in a country where that is unknown.

Such was the man to whom Ferdinand committed the regency of Castile; and though Ximenes was then near fourscore, and perfectly acquainted with the labor and difficulty of the office, his natural intrepidity of mind, and zeal for the public good, prompted him to accept of it without hesitation. Adrian of Utrecht, who had been sent into Spain a few months before the death of Ferdinand, produced full powers from the archduke to assume the name and authority of regent, upon the demise of his grandfather; but such was the aversion of the Spaniards to the government of a stranger, and so unequal the abilities of the two competitors, that Adrian's claim would at once have been rejected, if Ximenes himself, from complaisance to his new master, had not consented to acknowledge him as regent, and to carry on the government in conjunc-

tion with him. By this, however, Adrian acquired a dignity merely nominal. Ximenes, though he treated him with great decency, and even respect, retained the whole power in his own hands.[35]

The cardinal's first care was to observe the motions of the infant Don Ferdinand, who, having been flattered with so near a prospect of supreme power, bore the disappointment of his hopes with greater impatience than a prince at a period of life so early could have been supposed to feel. Ximenes, under pretence of providing more effectually for his safety, removed him from Guadalupe, the place in which he had been educated, to Madrid, where he fixed the residence of the court. There he was under the cardinal's own eye, and his conduct, with that of his domestics, was watched with the utmost attention.[36]

The first intelligence he received from the Low Countries gave greater disquiet to the cardinal, and convinced him how difficult a task it would be to conduct the affairs of an inexperienced prince, under the influence of councillors unacquainted with the laws and manners of Spain. No sooner did the account of Ferdinand's death reach Brussels, than Charles, by the advice of his Flemish ministers, resolved to assume the title of king. By the laws of Spain, the sole right of the crowns, both of Castile and of Aragon, belonged to Joanna; and,

[35] Gometius de Reb. Gest. Ximenii, p. 150, fol. Compl. 1569.

[36] Minianæ Contin. Marianæ, lib. i. c. 2. Baudier, Hist. de Ximénes, p. 118

though her infirmities disqualified her from governing, this incapacity had not been declared by any public act of the cortes in either kingdom; so that the Spaniards considered this resolution, not only as a direct violation of their privileges, but as an unnatural usurpation in a son on the prerogatives of a mother, towards whom, in her present unhappy situation, he manifested a less delicate regard than her subjects had always expressed.[37] The Flemish court, however, having prevailed both on the pope and on the emperor to address letters to Charles as king of Castile; the former of whom, it was pretended, had a right, as head of the Church, and the latter, as head of the empire, to confer this title; instructions were sent to Ximenes, to prevail on the Spaniards to acknowledge it. Ximenes, though he had earnestly remonstrated against the measure, as no less unpopular than unnecessary, resolved to exert all his authority and credit in carrying it into execution, and immediately assembled such of the nobles as were then at court. What Charles required was laid before them; and when, instead of complying with his demands, they began to murmur against such an unprecedented encroachment on their privileges, and to talk high of the rights of Joanna, and their oath of allegiance to her, Ximenes hastily interposed, and, with that firm and decisive tone which was natural to him, told them, that they were not called now to deliberate, but to obey; that their sovereign did not

[37] P. Mart. Ep. 568.

apply to them for advice, but expected submission; and "this day," added he, "Charles shall be proclaimed king of Castile in Madrid; and the rest of the cities, I doubt not, will follow its example." On the spot he gave orders for that purpose;[38] and, notwithstanding the novelty of the practice, and the secret discontents of many persons of distinction, Charles's title was universally recognized. In Aragon, where the privileges of the subject were more extensive, and the abilities, as well as authority, of the archbishop of Saragossa, whom Ferdinand had appointed regent, were far inferior to those of Ximenes, the same obsequiousness to the will of Charles did not appear, nor was he acknowledged there under any other character but that of prince, until his arrival in Spain.[39]

Ximenes, though possessed only of delegated power, which, from his advanced age, he could not expect to enjoy long, assumed, together with the character of regent, all the ideas natural to a monarch, and adopted schemes for extending the regal authority, which he pursued with as much intrepidity and ardor as if he himself had been to reap the advantages resulting from their success. The exorbitant privileges of the Castilian nobles circumscribed the prerogative of the prince within very narrow limits. These privileges the cardinal considered as so many unjust extortions from the crown, and determined to abridge them. Danger-

[38] Gometius, p. 152, &c. Baudier, Hist. de Ximén. p. 121.
[39] P. Mart. Ep. 572.

ous as the attempt was, there were circumstances in his situation which promised him greater success than any king of Castile could have expected. His strict and prudent economy of his archiepiscopal revenues furnished him with more ready money than the crown could at any time command; the sanctity of his manners, his charity and munificence, rendered him the idol of the people; and the nobles themselves, not suspecting any danger from him, did not observe his motions with the same jealous attention as they would have watched those of one of their monarchs.

Immediately upon his accession to the regency, several of the nobles, fancying that the reins of government would, of consequence, be somewhat relaxed, began to assemble their vassals, and to prosecute, by force of arms, private quarrels and pretensions, which the authority of Ferdinand had obliged them to dissemble, or to relinquish. But Ximenes, who had taken into pay a good body of troops, opposed and defeated all their designs with unexpected vigor and facility; and though he did not treat the authors of these disorders with any cruelty, he forced them to acts of submission extremely mortifying to the haughty spirit of Castilian grandees.

But while the cardinal's attacks were confined to individuals, and every act of rigor was justified by the appearance of necessity, founded on the forms of justice, and tempered with a mixture of lenity, there was scarcely room for jealousy or complaint.

It was not so with his next measure, which, by striking at a privilege essential to the nobility, gave a general alarm to the whole order. By the feudal constitution, the military power was lodged in the hands of the nobles, and men of an inferior condition were called into the field only as their vassals, and to follow their banners. A king, with scanty revenues, and a limited prerogative, depended on these potent barons in all his operations. It was with their forces he attacked his enemies, and with them he defended his kingdom. While at the head of troops attached warmly to their own immediate lords, and accustomed to obey no other commands, his authority was precarious, and his efforts feeble. From this state Ximenes resolved to deliver the crown; and as mercenary standing armies were unknown under the feudal government, and would have been odious to a martial and generous people, he issued a proclamation, commanding every city in Castile to enroll a certain number of its burgesses, in order that they might be trained to the use of arms on Sundays and holidays; he engaged to provide officers to command them at the public expense; and, as an encouragement to the private men, promised them an exemption from all taxes and impositions. The frequent incursions of the Moors from Africa, and the necessity of having some force always ready to oppose them, furnished a plausible pretence for this innovation. The object really in view was to secure the king a body of troops independent of

his barons, and which might serve to counterbalance their power.[40] The nobles were not slow in perceiving what was his intention, and saw how effectually the scheme which he had adopted would accomplish his end; but as a measure which had the pious appearance of resisting the progress of the infidels was extremely popular, and as any opposition to it, arising from their order alone, would have been imputed wholly to interested motives, they endeavored to excite the cities themselves to refuse obedience, and to inveigh against the proclamation as inconsistent with their charters and privileges. In consequence of their instigations, Burgos, Valladolid, and several other cities, rose in open mutiny. Some of the grandees declared themselves their protectors. Violent remonstrances were presented to the king. His Flemish councillors were alarmed. Ximenes alone continued firm and undaunted; and partly by terror, partly by entreaty; by force in some instances, and by forbearance in others; he prevailed on all the refractory cities to comply.[41] During his administration, he continued to execute his plan with vigor; but soon after his death it was entirely dropped.

His success in this scheme for reducing the exorbitant power of the nobility encouraged him to attempt a diminution of their possessions, which were no less exorbitant. During the contests and

[40] Minianæ Continuatio Marianæ, fol. Hag. 1733, p. 3.

[41] P. Mart. Ep. 556, &c. Gometius, p. 160, &c.

disorders inseparable from the feudal government, the nobles, ever attentive to their own interest, and taking advantage of the weakness or distress of their monarchs, had seized some parts of the royal demesnes, obtained grants of others, and, having gradually wrested almost the whole out of the hands of the prince, had annexed them to their own estates. The titles by which most of the grandees held these lands were extremely defective; it was from some successful usurpation which the crown had been too feeble to dispute, that many derived their only claim to possession. An inquiry carried back to the origin of these encroachments, which were almost coeval with the feudal system, was impracticable; and, as it would have stripped every nobleman in Spain of great part of his lands, it must have excited a general revolt. Such a step was too bold, even for the enterprising spirit of Ximenes. He confined himself to the reign of Ferdinand; and, beginning with the pensions granted during that time, refused to make any farther payment, because all right to them expired with his life. He then called to account such as had acquired crown lands under the administration of that monarch, and at once resumed whatever he had alienated. The effects of these revocations extended to many persons of high rank; for though Ferdinand was a prince of little generosity, yet he and Isabella having been raised to the throne of Castile by a powerful faction of the nobles, they were obliged to reward the zeal of their adherents with great liberality,

and the royal demesnes were their only fund for that purpose. The addition made to the revenue of the crown by these revocations, together with his own frugal economy, enabled Ximenes not only to discharge all the debts which Ferdinand had left, and to remit considerable sums to Flanders, but to pay the officers of his new militia, and to establish magazines not only more numerous, but better furnished with artillery, arms, and warlike stores, than Spain had ever possessed in any former age.[42] The prudent and disinterested application of these sums was a full apology to the people for the rigor with which they were exacted.

The nobles, alarmed at these repeated attacks, began to think of precautions for the safety of their order. Many cabals were formed, loud complaints were uttered, and desperate resolutions taken; but before they proceeded to extremities, they appointed some of their number to examine the powers in consequence of which the cardinal exercised acts of such high authority. The admiral of Castile, the Duke de Infantado, and the Conde de Benevento, grandees of the first rank, were intrusted with this commission. Ximenes received them with cold civility, and, in answer to their demand, produced the testament of Ferdinand, by which he was appointed regent, together with the ratification of that deed by Charles. To both these they objected; and he endeavored to establish their validity. As the conversation grew warm, he led them insensibly

[42] Fléchier, Vie de Ximén. ii. 600.

towards a balcony, from which they had a view of a large body of troops under arms, and of a formidable train of artillery. "Behold," says he, pointing to these, and raising his voice, "the powers which I have received from his Catholic majesty. With these I govern Castile; and with these I will govern it, until the king, your master and mine, takes possession of his kingdom."[43] A declaration so bold and haughty silenced them, and astonished their associates. To take arms against a man aware of his danger, and prepared for his defence, was what despair alone would dictate. All thoughts of a general confederacy against the cardinal's administration were laid aside; and, except for some slight commotions, excited by the private resentment of particular noblemen, the tranquillity of Castile suffered no interruption.

It was not only from the opposition of the Spanish nobility that obstacles arose to the execution of the cardinal's schemes; he had a constant struggle to maintain with the Flemish ministers, who, presuming upon their favor with the young king, aimed at directing the affairs of Spain, as well as those of their own country. Jealous of the great abilities and independent spirit of Ximenes, they considered him rather as a rival who might circumscribe their power, than as a minister, who, by his prudence and vigor, was adding to the grandeur and authority of their master. Every complaint against his administration was listened to with pleasure by the

[43] Fléch. ii. 551. Ferreras, Hist. viii. 433.

courtiers in the Low Countries. Unnecessary obstructions were thrown by their means in the way of all his measures; and though they could not, either with decency or safety, deprive him of the office of regent, they endeavored to lessen his authority by dividing it. They soon discovered that Adrian of Utrecht, already joined with him in office had neither genius nor spirit sufficient to give the least check to his proceedings; and therefore Charles, by their advice, added to the commission of regency La Chau, a Flemish gentleman, and afterwards Amerstorf, a nobleman of Holland, the former distinguished for his address, the latter for his firmness. Ximenes, though no stranger to the malevolent intention of the Flemish courtiers, received these new associates with all the external marks of distinction due to the office with which they were invested; but when they came to enter upon business, he abated nothing of that air of superiority with which he had treated Adrian, and still retained the sole direction of affairs. The Spaniards, more averse, perhaps, than any other people to the government of strangers, approved of all his efforts to preserve his own authority. Even the nobles, influenced by this national passion, and forgetting their jealousies and discontents, chose rather to see the supreme power in the hands of one of their countrymen, whom they feared, than in those of foreigners, whom they hated.

Ximenes, though engaged in such great schemes of domestic policy, and embarrassed by the artifices

and intrigues of the Flemish ministers, had the burden of two foreign wars to support. The one was in Navarre, which was invaded by its unfortunate monarch, John d'Albret. The death of Ferdinand, the absence of Charles, the discord and disaffection which reigned among the Spanish nobles, seemed to present him with a favorable opportunity of recovering his dominions. The cardinal's vigilance, however, defeated a measure so well concerted. As he foresaw the danger to which that kingdom might be exposed, one of his first acts of administration was to order thither a considerable body of troops. While the king was employed with one part of his army in the siege of St. Jean Pied en Port, Villalva, an officer of great experience and courage, attacked the other by surprise, and cut it to pieces. The king instantly retreated with precipitation, and an end was put to the war.[44] But as Navarre was filled at that time with towns and castles slightly fortified and weakly garrisoned, which, being unable to resist an enemy, served only to furnish him with places of retreat, Ximenes, always bold and decisive in his measures, ordered every one of these to be dismantled, except Pampeluna, the fortifications of which he proposed to render very strong. To this uncommon precaution Spain owes the possession of Navarre. The French, since that period, have often entered and have as often overrun the open country. While they were exposed to all the inconveniences attending an invading army, the

[44] P. Mart. Ep. 570.

Spaniards have easily drawn troops from the neighboring provinces to oppose them; and the French, having no place of any strength to which they could retire, have been obliged repeatedly to abandon their conquest, with as much rapidity as they gained it.

The other war which he carried on in Africa, against the famous adventurer Horuc Barbarossa, who, from a private corsair, raised himself, by his singular valor and address, to be king of Algiers and Tunis, was far from being equally successful. The ill conduct of the Spanish general, and the rash valor of his troops, presented Barbarossa with an easy victory. Many perished in the battle, more in the retreat, and the remainder returned into Spain covered with infamy. The magnanimity, however, with which the cardinal bore this disgrace, the only one he experienced during his administration, added new lustre to his character.[45] Great composure of temper under a disappointment was not expected from a man so remarkable for the eagerness and impatience with which he urged on the execution of all his schemes.

This disaster was soon forgotten; while the conduct of the Flemish court proved the cause of constant uneasiness, not only to the cardinal, but to the whole Spanish nation. All the great qualities of Chièvres, the prime minister and favorite of the young king, were sullied with an ignoble and sordid avarice. The accession of his master to the crown

[45] Gometius, lib. vi. p. 179.

of Spain opened a new and copious source for the gratification of this passion. During the time of Charles's residence in Flanders, the whole tribe of pretenders to offices or to favor resorted thither. They soon discovered that, without the patronage of Chièvres, it was vain to hope for preferment; nor did they want sagacity to find out the proper method of securing his protection. Great sums of money were drawn out of Spain. Everything was venal, and disposed of to the highest bidder. After the example of Chièvres, the inferior Flemish ministers engaged in this traffic, which became as general and avowed, as it was infamous.[46] The Spaniards were filled with rage when they beheld offices of great importance to the welfare of their country set to sale by strangers, unconcerned for its honor or its happiness. Ximenes, disinterested in his whole administration, and a stranger, from his native grandeur of mind, to the passion of avarice, inveighed with the utmost boldness against the venality of the Flemings. He represented to the king, in strong terms, the murmurs and indignation which their behavior excited among a free and high-spirited people, and besought him to set out without loss of time for Spain, that by his presence he might dissipate the clouds which were gathering all over the kingdom.[47]

Charles was fully sensible that he had delayed too long to take possession of his dominions in Spain. Powerful obstacles, however, stood in his

[46] Miniana, Contin. lib. i. c. 2. [47] P. Mart. Ep. 576.

way, and detained him in the Low Countries. The war which the League of Cambray had kindled in Italy, still subsisted; though, during its course, the armies of all the parties engaged in it had changed their destination and their objects. France was now in alliance with Venice, which it had at first combined to destroy. Maximilian and Ferdinand had for some years carried on hostilities against France, their original ally, to the valor of whose troops the confederacy had been indebted in a great measure for its success. Together with his kingdoms, Ferdinand transmitted this war to his grandson; and there was reason to expect that Maximilian, always fond of new enterprises, would persuade the young monarch to enter into it with ardor. But the Flemings, who had long possessed an extensive commerce, which, during the League of Cambray, had grown to a great height upon the ruins of the Venetian trade, dreaded a rupture with France; and Chièvres, sagacious to discern the true interest of his country, and not warped on this occasion by his love of wealth, warmly declared for maintaining peace with the French nation. Francis I., destitute of allies, and solicitous to secure his late conquests in Italy by a treaty, listened with joy to the first overtures of accommodation. Chièvres himself conducted the negotiation in the name of Charles. Gouffier appeared as plenipotentiary for Francis. Each of them had presided over the education of the prince whom he represented. They had both adopted the same pacific system; and

were equally persuaded that the union of the two monarchs was the happiest event for themselves, as well as for their kingdoms. In such hands the negotiation did not languish. A few days after opening their conferences at Noyon, they concluded a treaty of confederacy and mutual defence between the two monarchs; the chief articles in which were, that Francis should give in marriage to Charles his eldest daughter, the princess Louise, an infant of a year old, and, as her dowry, should make over to him all his claims and pretensions upon the kingdom of Naples; that, in consideration of Charles's being already in possession of Naples, he should, until the accomplishment of the marriage, pay a hundred thousand crowns a year to the French king, and the half of that sum annually, as long as the princess had no children; that when Charles shall arrive in Spain, the heirs of the king of Navarre may represent to him their right to that kingdom; and if, after examining their claim, he does not give them satisfaction, Francis shall be at liberty to assist them with all his forces.[48] This alliance not only united Charles and Francis, but obliged Maximilian, who was unable alone to cope with the French and Venetians, to enter into a treaty with those powers, which put a final period to the bloody and tedious war that the League of Cambray had occasioned. Europe enjoyed a few years of universal tranquillity, and was indebted for that blessing to two princes, whose rivalship

[48] Léonard, Recueil des Traités, tom. ii. 69.

and ambition kept it in perpetual discord and agitation during the remainder of their reigns.

By the treaty of Noyon, Charles secured a safe passage into Spain. It was not, however, the interest of his Flemish ministers that he should visit that kingdom soon. While he resided in Flanders, the revenues of the Spanish crown were spent there, and they engrossed, without any competitors, all the effects of their monarch's generosity; their country became the seat of government, and all favors were dispensed by them. Of all these advantages they ran the risk of seeing themselves deprived, from the moment that their sovereign entered Spain. The Spaniards would naturally assume the direction of their own affairs; the Low Countries would be considered only as a province of that mighty monarchy; and they who now distributed the favors of the prince to others, must then be content to receive them from the hands of strangers. But what Chièvres chiefly wished to avoid was an interview between the king and Ximenes. On the one hand, the wisdom, the integrity, and the magnanimity of that prelate gave him a wonderful ascendant over the minds of men; and it was extremely probable, that these great qualities, added to the reverence due to his age and office, would command the respect of a young prince, who, capable of noble and generous sentiments himself, would, in proportion to his admiration of the cardinal's virtues, lessen his deference towards persons of another character.

Or, on the other hand, if Charles should allow his Flemish favorites to retain all the influence over his councils which they at present possessed, it was easy to foresee that the cardinal would remonstrate loudly against such an indignity to the Spanish nation, and vindicate the rights of his country with the same intrepidity and success with which he had asserted the prerogatives of the crown. For these reasons, all his Flemish councillors combined to retard his departure; and Charles, unsuspicious, from want of experience, and fond of his native country, suffered himself to be unnecessarily detained in the Netherlands a whole year after signing the treaty of Noyon.

The repeated entreaties of Ximenes, the advice of his grandfather Maximilian, and the impatient murmurs of his Spanish subjects, prevailed on him at last to embark. He was attended not only by Chièvres, his prime minister, but by a numerous and splendid train of the Flemish nobles, fond of beholding the grandeur, or of sharing in the bounty, of their prince. After a dangerous voyage, he landed at Villa Viciosa, in the province of Asturias, and was received with such loud acclamations of joy as a new monarch, whose arrival was so ardently desired, had reason to expect. The Spanish nobility resorted to their sovereign from all parts of the kingdom, and displayed a magnificence which the Flemings were unable to emulate.[49]

[49] P. Mart. Ep. 599, 601.

Ximenes, who considered the presence of the king as the greatest blessing to his dominions, was advancing towards the coast as fast as the infirm state of his health would permit, in order to receive him. During his regency, and notwithstanding his extreme old age, he had abated in no degree the rigor or frequency of his mortifications; and to these he added such laborious assiduity in business, as would have worn out the most youthful and vigorous constitution. Every day he employed several hours in devotion; he celebrated mass in person; he even allotted some space for study. Notwithstanding these occupations, he regularly attended the council; he received and read all papers presented to him; he dictated letters and instructions; and took under his inspection all business, civil, ecclesiastical, or military. Every moment of his time was filled up with some serious employment. The only amusement in which he indulged himself, by way of relaxation after business, was to canvass, with a few friars and other divines, some intricate article in scholastic theology. Wasted by such a course of life, the infirmities of age daily grew upon him. On his journey, a violent disorder seized him at Bos Equillos, attended with uncommon symptoms; which his followers considered as the effect of poison,[50] but could not agree whether the crime ought to be imputed to the hatred of the Spanish nobles, or to the malice of the Flemish courtiers. This accident obliging

[50] Miniana, Contin. lib. i. c. 3.

him to stop short, he wrote to Charles, and with his usual boldness advised him to dismiss all the strangers in his train, whose numbers and credit gave offence already to the Spaniards, and would erelong alienate the affections of the whole people. At the same time, he earnestly desired to have an interview with the king, that he might inform him of the state of the nation and the temper of his subjects. To prevent this, not only the Flemings, but the Spanish grandees, employed all their address, and industriously kept Charles at a distance from Aranda, the place to which the cardinal had removed. Through their suggestions, every measure that he recommended was rejected, the utmost care was taken to make him feel, and to point out to the whole nation, that his power was on the decline; even in things purely trivial, such a choice was always made as was deemed most disagreeable to him. Ximenes did not bear this treatment with his usual fortitude of spirit. Conscious of his own integrity and merit, he expected a more grateful return from a prince to whom he delivered a kingdom more flourishing than it had been in any former age, together with authority more extensive and better established than the most illustrious of his ancestors had ever possessed. He could not, therefore, on many occasions, refrain from giving vent to his indignation and complaints. He lamented the fate of his country, and foretold the calamities which it would suffer from the insolence, the rapaciousness, and ignorance of stran-

gers. While his mind was agitated by these passions, he received a letter from the king, in which, after a few cold and formal expressions of regard, he was allowed to retire to his diocese, that, after a life of such continued labor, he might end his days in tranquillity. This message proved fatal to Ximenes. His haughty mind, it is probable, could not survive disgrace; perhaps his generous heart could not bear the prospect of the misfortunes ready to fall on his country. Whichsoever of these opinions we embrace, certain it is that he expired a few hours after reading the letter.[51] The variety, the grandeur, and the success of his schemes, during a regency of only twenty months, leave it doubtful whether his sagacity in council, his prudence in conduct, or his boldness in execution, deserve the greatest praise. His reputation is still high in Spain, not only for wisdom, but for sanctity; and he is the only prime minister mentioned in history whom his contemporaries reverenced as a saint,[52] and to whom the people under his government ascribed the power of working miracles.

Soon after the death of Ximenes, Charles made his public entry, with great pomp, into Valladolid, whither he had summoned the cortes of Castile. Though he assumed on all occasions the name of king, that title had never been acknowledged in

[51] Marsollier, Vie de Ximénes, p. 447. Gometius, lib. vii. p. 206, &c. Baudier, Hist. de Ximén. ii. p. 208.

[52] Fléchier, Vie de Ximén. ii. p. 746.

the cortes. The Spaniards considering Joanna as possessed of the sole right to the crown, and no example of a son's having enjoyed the title of king during the life of his parents occurring in their history, the cortes discovered all that scrupulous respect for ancient forms, and that aversion to innovation, which are conspicuous in popular assemblies. The presence, however, of their prince, the address, the artifices, and the threats of his ministers, prevailed on them at last to proclaim him king, in conjunction with his mother, whose name they appointed to be placed before that of her son in all public acts. But when they made this concession, they declared, that if, at any future period, Joanna should recover the exercise of reason, the whole authority should return into her hands. At the same time, they voted a free gift of six hundred thousand ducats, to be paid in three years, a sum more considerable than had ever been granted to any former monarch.[53]

Notwithstanding this obsequiousness of the cortes to the will of the king, the most violent symptoms of dissatisfaction with his government began to break out in the kingdom. Chièvres had acquired over the mind of the young monarch the ascendant not only of a tutor, but of a parent. Charles seemed to have no sentiments but those which his minister inspired, and scarcely uttered a word but what he put into his mouth. He was constantly surrounded by Flemings; no person got access to

[53] Miniana, Contin. lib. i. c. 3. P. Mart. Ep. 608. Sandov. p. 12.

him without their permission; nor was any admitted to audience but in their presence. As he spoke the Spanish language very imperfectly, his answers were always extremely short, and often delivered with hesitation. From all these circumstances, many of the Spaniards were led to believe that he was a prince of a slow and narrow genius. Some pretended to discover a strong resemblance between him and his mother, and began to whisper that his capacity for government would never be far superior to hers; and though they who had the best opportunity of judging concerning his character maintained, that, notwithstanding such unpromising appearances, he possessed a large fund of knowledge, as well as of sagacity;[54] yet all agreed in condemning his partiality towards the Flemings, and his attachment to his favorites, as unreasonable and immoderate. Unfortunately for Charles, these favorites were unworthy of his confidence. To amass wealth seems to have been their only aim; and as they had reason to fear, that either their master's good sense, or the indignation of the Spaniards, might soon abridge their power, they hastened to improve the present opportunity, and their avarice was the more rapacious, because they expected their authority to be of no long duration. All honors, offices, and benefices were either engrossed by the Flemings, or publicly sold by them. Chièvres, his wife, and Sauvage, whom Charles, on the death of Ximenes, had imprudently raised to be chancellor

[54] Sandoval, p. 31. P. Mart. Ep. 655.

of Castile, vied with each other in all the refinements of extortion and venality. Not only the Spanish historians, who, from resentment, may be suspected of exaggeration, but Peter Martyr Angleria, an Italian, who resided at that time in the court of Spain, and who was under no temptation to deceive the persons to whom his letters are addressed, give a description which is almost incredible, of the insatiable and shameless covetousness of the Flemings. According to Angleria's calculation, which he asserts to be extremely moderate, they remitted into the Low Countries, in the space of ten months, no less a sum than a million and one hundred thousand ducats. The nomination of William de Croy, Chièvres's nephew, a young man not of canonical age, to the archbishopric of Toledo, exasperated the Spaniards more than all these exactions. They considered the elevation of a stranger to the head of their Church, and to the richest benefice in the kingdom, not only as an injury, but as an insult to the whole nation; both clergy and laity, the former from interest, the latter from indignation, joined in exclaiming against it.[55]

Charles, leaving Castile thus disgusted with his administration, set out for Saragossa, the capital of Aragon, that he might be present in the cortes of that kingdom. On his way thither, he took leave of his brother Ferdinand, whom he sent into Germany on the pretence of visiting their grandfather,

[55] Sandoval, 28–31. P. Mart. Ep. 608, 611, 613, 614, 622, 623, 639. Miniana, Contin. lib. i. c. 3, p. 8.

Maximilian, in his old age. To this prudent precaution, Charles owed the preservation of his Spanish dominions. During the violent commotions which arose there soon after this period, the Spaniards would infallibly have offered the crown to a prince, who was the darling of the whole nation; nor did Ferdinand want ambition, or counsellors, that might have prompted him to accept of the offer.[56]

The Aragonese had not hitherto acknowledged Charles as king, nor would they allow the cortes to be assembled in his name, but in that of the justiza, to whom, during an interregnum, this privilege belonged.[57] The opposition Charles had to struggle with in the cortes of Aragon, was more violent and obstinate than that which he had overcome in Castile: after long delays, however, and with much difficulty, he persuaded the members to confer on him the title of king, in conjunction with his mother. At the same time, he bound himself, by that solemn oath which the Aragonese exacted of their kings, never to violate any of their rights or liberties. When a donative was demanded, the members were still more intractable; many months elapsed before they would agree to grant Charles two hundred thousand ducats, and that sum they appropriated so strictly for paying debts of the crown, which had long been forgotten, that a very small part of it came into the king's hands. What

[56] P. Martyr, Ep. 619. Ferreras, viii. 460.
[57] P. Martyr, Ep. 605.

had happened in Castile taught them caution, and determined them rather to satisfy the claims of their fellow-citizens, how obsolete soever, than to furnish strangers the means of enriching themselves with the spoils of their country.[58]

During these proceedings of the cortes, ambassadors arrived at Saragossa from Francis I. and the young king of Navarre, demanding the restitution of that kingdom in terms of the treaty of Noyon. But neither Charles, nor the Castilian nobles whom he consulted on this occasion, discovered any inclination to part with this acquisition. A conference held soon after at Montpélier, in order to bring this matter to an amicable issue, was altogether fruitless; while the French urged the injustice of the usurpation, the Spaniards were attentive only to its importance.[59]

From Aragon, Charles proceeded to Catalonia, where he wasted much time, encountered more difficulties, and gained less money. The Flemings were now become so odious in every province of Spain by their exactions, that the desire of mortifying them, and of disappointing their avarice, augmented the jealousy with which a free people usually conduct their deliberations.

The Castilians, who had felt most sensibly the weight and rigor of the oppressive schemes carried on by the Flemings, resolved no longer to submit with a tameness fatal to themselves, and which rendered them the objects of scorn to their fellow-sub-

[58] P. Martyr, Ep. 615 – 634. [59] Ibid. 605, 633, 640.

jects in the other kingdoms of which the Spanish monarchy was composed. Segovia, Toledo, Seville, and several other cities of the first rank, entered into a confederacy for the defence of their rights and privileges; and, notwithstanding the silence of the nobility, who, on this occasion, discovered neither the public spirit nor the resolution which became their order, the confederates laid before the king a full view of the state of the kingdom, and of the maleadministration of his favorites. The preferment of strangers, the exportation of the current coin, the increase of taxes, were the grievances of which they chiefly complained; and of these they demanded redress with that boldness which is natural to a free people. These remonstrances, presented at first at Saragossa, and renewed afterwards at Barcelona, Charles treated with great neglect. The confederacy, however, of these cities, at this juncture, was the beginning of that famous union among the commons of Castile, which not long after threw the kingdom into such violent convulsions as shook the throne, and almost overturned the constitution.[60]

Soon after Charles's arrival at Barcelona, he received the account of an event which interested him much more than the murmurs of the Castilians, or the scruples of the cortes of Catalonia. This was the death of the Emperor Maximilian; an occurrence of small importance in itself, for he was a prince conspicuous neither for his virtues, nor his

[60] P. Martyr, Ep. 630. Ferreras, viii. 464.

power, nor his abilities; but rendered by its consequences more memorable than any that had happened during several ages. It broke that profound and universal peace which then reigned in the Christian world; it excited a rivalship between two princes, which threw all Europe into agitation, and kindled wars more general, and of longer duration, than had hitherto been known in modern times.

The revolutions occasioned by the expedition of the French king, Charles VIII., into Italy, had inspired the European princes with new ideas concerning the importance of the imperial dignity. The claims of the empire upon some of the Italian states were numerous; its jurisdiction over others was extensive; and though the former had been almost abandoned, and the latter seldom exercised, under princes of slender abilities and of little influence, it was obvious, that, in the hands of an emperor possessed of power or of genius, they might be employed as engines for stretching his dominion over the greater part of that country. Even Maximilian, feeble and unsteady as his conduct always was, had availed himself of the infinite pretensions of the empire, and had reaped advantage from every war and every negotiation in Italy during his reign. These considerations, added to the dignity of the station, confessedly the first among Christian princes, and to the rights inherent in the office, which, if exerted with vigor, were far from being inconsiderable, rendered the imperial crown more than ever an object of ambition.

Not long before his death, Maximilian had discovered great solicitude to preserve this dignity in the Austrian family, and to procure the king of Spain to be chosen his successor. But he himself having never been crowned by the pope, a ceremony deemed essential in that age, was considered only as emperor *elect.* Though historians have not attended to that distinction, neither the Italian nor German chancery bestowed any other title upon him than that of King of the Romans; and no example occurring in history of any person's being chosen a successor to a king of the Romans, the Germans, always tenacious of their forms, and unwilling to confer upon Charles an office for which their constitution knew no name, obstinately refused to gratify Maximilian in that point.[61]

By his death, this difficulty was at once removed, and Charles openly aspired to that dignity which his grandfather had attempted, without success, to secure for him. At the same time, Francis I., a powerful rival, entered the lists against him; and the attention of all Europe was fixed upon this competition, no less illustrious from the high rank of the candidates, than from the importance of the prize for which they contended. Each of them urged his pretensions with sanguine expectations, and with no unpromising prospect of success. Charles considered the imperial crown as belonging

[61] Guicciardini, lib. xiii. p. 15. Hist. Génér. d'Allemagne, par P. Barre, tom. viii. part. 1, p. 1087. P. Heuter. Rer. Austr. lib. vii. c. 17, p. 179, lib. viii. c. 2, p. 183.

to him of right, from its long continuance in the Austrian line; he knew that none of the German princes possessed power or influence enough to appear as his antagonist; he flattered himself, that no consideration would induce the natives of Germany to exalt any foreign prince to a dignity, which during so many ages had been deemed peculiar to their own nation; and least of all, that they would confer this honor upon Francis I., the sovereign of a people whose genius, and laws, and manners, differed so widely from those of the Germans, that it was hardly possible to establish any cordial union between them; he trusted not a little to the effect of Maximilian's negotiations, which, though they did not attain their ends, had prepared the minds of the Germans for his elevation to the imperial throne; but what he relied on as a chief recommendation, was the fortunate situation of his hereditary dominions in Germany, which served as a natural barrier to the empire against the encroachments of the Turkish power. The conquests, the abilities, and the ambition of Sultan Selim II. had spread over Europe, at that time, a general and well-founded alarm. By his victories over the Mamelukes, and the extirpation of that gallant body of men, he had not only added Egypt and Syria to his empire, but had secured to it such a degree of internal tranquillity, that he was ready to turn against Christendom the whole force of his arms, which nothing hitherto had been able to resist. The most effectual expedient for stopping

the progress of this torrent seemed to be the election of an emperor possessed of extensive territories in that country where its first impression would be felt, and who, besides, could combat this formidable enemy with all the forces of a powerful monarchy, and with all the wealth furnished by the mines of the New World, or the commerce of the Low Countries. These were the arguments by which Charles publicly supported his claim; and to men of integrity and reflection, they appeared to be not only plausible, but convincing. He did not, however, trust the success of his cause to these alone. Great sums of money were remitted from Spain; all the refinements and artifices of negotiation were employed; and a considerable body of troops, kept on foot at that time by the states of the circle of Suabia, was secretly taken into his pay. The venal were gained by presents; the objections of the more scrupulous were answered or eluded; some feeble princes were threatened and overawed.[62]

On the other hand, Francis supported his claim with equal eagerness, and no less confidence of its being well founded. His emissaries contended that it was now high time to convince the princes of the house of Austria that the imperial crown was elective, and not hereditary; that other persons might aspire to an honor which their arrogance had accustomed them to regard as the property of their

[62] Guicc. lib. xiii. 159. Sleidan, Hist. of the Reformat. 14. Struvii Corp. Hist. German. ii. 971. Not. 20.

family; that it required a sovereign of mature judgment, and of approved abilities, to hold the reins of government in a country where such unknown opinions concerning religion had been published, as had thrown the minds of men into an uncommon agitation, which threatened the most violent effects; that a young prince, without experience, and who had hitherto given no specimens of his genius for command, was no fit match for Selim, a monarch grown old in the art of war and in course of victory; whereas, a king who in his early youth had triumphed over the valor and discipline of the Swiss, till then reckoned invincible, would be an antagonist not unworthy the conqueror of the East; that the fire and impetuosity of the French cavalry, added to the discipline and stability of the German infantry, would form an army so irresistible, that, instead of waiting the approach of the Ottoman forces, it might carry hostilities into the heart of their dominions; that the election of Charles would be inconsistent with a fundamental constitution, by which the person who holds the crown of Naples is excluded from aspiring to the imperial dignity; that his elevation to that honor would soon kindle a war in Italy, on account of his pretensions to the duchy of Milan, the effects of which could not fail of reaching the empire, and might prove fatal to it.[63] But while the French ambassadors enlarged upon these and

[63] Guicc. lib. xiii. 160. Sleid. p. 16. Geor. Sabini de Elect. Car. V. Historia apud. Scardii Script. Rer. German. vol. ii. p. 4.

other topics of the same kind in all the courts of Germany, Francis, sensible of the prejudices entertained against him as a foreigner, unacquainted with the German language or manners, endeavored to overcome these, and to gain the favor of the princes, by immense gifts and by infinite promises As the expeditious method of transmitting money, and the decent mode of conveying a bribe, by bills of exchange, were then little known, the French ambassadors travelled with a train of horses loaded with treasure, an equipage not very honorable for that prince by whom they were employed, and infamous for those to whom they were sent.[64]

The other European princes could not remain indifferent spectators of a contest, the decision of which so nearly affected every one of them. Their common interest ought naturally to have formed a general combination, in order to disappoint both competitors, and to prevent either of them from obtaining such a pre-eminence in power and dignity as might prove dangerous to the liberties of Europe. But the ideas with respect to a proper distribution and balance of power were so lately introduced into the system of European policy, that they were not hitherto objects of sufficient attention. The passions of some princes, the want of foresight in others, and the fear of giving offence to the candidates, hindered such a salutary union of the powers of Europe, and rendered them either totally negligent of the public safety or

[64] Mémoires du Maréch. de Fleuranges, p. 296.

kept them from exerting themselves with vigor in its behalf.

The Swiss cantons, though they dreaded the elevation of either of the contending monarchs, and though they wished to have seen some prince whose dominions were less extensive, and whose power was more moderate, seated on the imperial throne, were prompted, however, by their hatred of the French nation, to give an open preference to the pretensions of Charles, while they used their utmost influence to frustrate those of Francis.[65]

The Venetians easily discerned that it was the interest of their republic to have both the rivals set aside; but their jealousy of the house of Austria, whose ambition and neighborhood had been fatal to their grandeur, would not permit them to act up to their own ideas, and led them hastily to give the sanction of their approbation to the claim of the French king.

It was equally the interest, and more in the power, of Henry VIII. of England, to prevent either Francis or Charles from acquiring a dignity which would raise them so far above other monarchs. But though Henry often boasted that he held the balance of Europe in his hands, he had neither the steady attention, the accurate discernment, nor the dispassionate temper, which that delicate function required. On this occasion, it mortified his vanity so much, to think that he had not entered early into that noble competition

[65] Sabinus, p. 6

which reflected such honor upon the two antagonists, that he took a resolution of sending an ambassador into Germany, and of declaring himself a candidate for the imperial throne. The ambassador, though loaded with caresses by the German princes and the pope's nuncio, informed his master that he could hope for no success in a claim which he had been so late in preferring. Henry, imputing his disappointment to that circumstance alone, and soothed with this ostentatious display of his own importance, seems to have taken no further part in the matter, either by contributing to thwart both his rivals, or to promote one of them.[66]

Leo X., a pontiff no less renowned for his political abilities than for his love of the arts, was the only prince of the age who observed the motions of the two contending monarchs with a prudent attention, or who discovered a proper solicitude for the public safety. The imperial and papal jurisdiction interfered in so many instances, the complaints of usurpation were so numerous on both sides, and the territories of the Church owed their security so little to their own force, and so much to the weakness of the powers around them, that nothing was so formidable to the court of Rome as an emperor with extensive dominions, or of enterprising genius. Leo trembled at the prospect of beholding the imperial crown placed on the head of the king of Spain and of Naples, and the master of the New World; nor was he less afraid of seeing

[66] Mémoires de Fleuranges, 314. Herbert, Hist. of Henry VIII.

a king of France, who was duke of Milan and lord of Genoa, exalted to that dignity. He foretold that the election of either of them would be fatal to the independence of the holy see, to the peace of Italy, and perhaps to the liberties of Europe. But to oppose them with any prospect of success, required address and caution in proportion to the greatness of their power, and their opportunities of taking revenge. Leo was defective in neither. He secretly exhorted the German princes to place one of their own number on the imperial throne, which many of them were capable of filling with honor. He put them in mind of the constitution by which the kings of Naples were for ever excluded from that dignity.[67] He warmly exhorted the French king to persist in his claim, not from any desire that he should gain his end; but, as he foresaw that the Germans would be more disposed to favor the king of Spain, he hoped that Francis himself, when he discovered his own chance of success to be desperate, would be stimulated by resentment and the spirit of rivalship to concur with all his interest in raising some third person to the head of the empire: or, on the other hand, if Francis should make an unexpected progress, he did not doubt but that Charles would be induced, by similar motives, to act the same part; and thus, by a prudent attention, the mutual jealousy of the two rivals might be so dexterously managed as to disappoint both. But this scheme, the only one which a prince in

[67] Goldasti Constitutiones Imperiales. Francof. 1763, vol. i. 439.

Leo's situation could adopt, though concerted with great wisdom, was executed with little discretion. The French ambassadors in Germany fed their master with vain hopes; the pope's nuncio, being gained by them, altogether forgot the instructions which he had received; and Francis persevered so long and with such obstinacy in urging his own pretensions, as rendered all Leo's measures abortive.[68]

Such were the hopes of the candidates, and the views of the different princes, when the diet was opened according to form at Frankfort. The right of choosing an emperor had long been vested in seven great princes, distinguished by the name of electors, the origin of whose office, as well as the nature and extent of their powers, have already been explained. These were, at that time, Albert of Brandenburg, archbishop of Mentz; Herman Count de Wied, archbishop of Cologne; Richard de Greiffenklau, archbishop of Triers; Lewis, king of Bohemia; Lewis, count palatine of the Rhine; Frederic, duke of Saxony; and Joachim I., marquis of Brandenburg. Notwithstanding the artful arguments produced by the ambassadors of the two kings in favor of their respective masters, and in spite of all their solicitations, intrigues, and presents, the electors did not forget that maxim on which the liberty of the German constitution was thought to be founded. Among the members of the Germanic body, which is a great republic composed of states almost independent, the first prin-

[68] Guicciar. lib. xiii. 161.

ciple of patriotism is to depress and limit the power of the emperor; and of this idea, so natural under such a form of government, a German politician seldom loses sight. No prince of considerable power or extensive dominions had for some ages been raised to the imperial throne. To this prudent precaution many of the great families in Germany owed the splendor and independence which they had acquired during that period. To elect either of the contending monarchs would have been a gross violation of that salutary maxim; would have given to the empire a master instead of a head; and would have reduced themselves from the rank of being almost his equals to the condition of his subjects.

Full of these ideas, all the electors turned their eyes towards Frederic, duke of Saxony, a prince of such eminent virtue and abilities, as to be distinguished by the name of the *sage*, and with one voice they offered him the imperial crown. He was not dazzled with that object, which monarchs, so far superior to him in power, courted with such eagerness; and after deliberating upon the matter a short time, he rejected it with a magnanimity and disinterestedness no less singular than admirable. "Nothing," he observed, "could be more impolitic, than an obstinate adherence to a maxim which, though sound and just in many cases, was not applicable to all. In times of tranquillity," said he, "we wish for an emperor who has not power to invade our liberties; times of danger demand one

who is able to secure our safety. The Turkish armies, led by a gallant and victorious monarch are now assembling. They are ready to pour in upon Germany with a violence unknown in former ages. New conjunctures call for new expedients. The imperial sceptre must be committed to some hand more powerful than mine, or that of any other German prince. We possess neither dominions, nor revenues, nor authority, which enable us to encounter such a formidable enemy. Recourse must be had in this exigency to one of the rival monarchs. Each of them can bring into the field forces sufficient for our defence. But as the king of Spain is of German extraction; as he is a member and prince of the empire by the territories which descend to him from his grandfather; as his dominions stretch along that frontier which lies most exposed to the enemy; his claim is preferable, in my opinion, to that of a stranger to our language, to our blood, and to our country; and therefore I give my vote to confer on him the imperial crown."

This opinion, dictated by such uncommon generosity, and supported by arguments so plausible, made a deep impression on the electors. The king of Spain's ambassadors, sensible of the important service which Frederic had done their master, sent him a considerable sum of money, as the first token of that prince's gratitude. But he who had greatness of mind to refuse a crown, disdained to receive a bribe; and, upon their entreating that at least he

would permit them to distribute part of that sum among his attendants, he replied, that he could not prevent them from accepting what should be offered, but whoever took a single florin should be dismissed next morning from his service.[69]

No prince in Germany could now aspire to a dignity which Frederic had declined, for reasons applicable to them all. It remained to make a choice between the two great competitors. But besides the prejudice in Charles's favor arising from his birth, as well as the situation of his German dominions, he owed not a little to the abilities of the Cardinal de Gurk, and the zeal of Erard de la Mark, bishop of Liège, two of his ambassadors, who had conducted their negotiations with more prudence and address than those intrusted by the French king. The former, who had long been the minister and favorite of Maximilian, was well ac-

[69] P. Daniel, an historian of considerable name, seems to call in question the truth of this account of Frederic's behavior, in refusing the imperial crown, because it is not mentioned by Georgius Sabinus in his History of the Election and Coronation of Charles V. tom. iii. p. 63. But no great stress ought to be laid on an omission in a superficial author, whose treatise, though dignified with the name of History, contains only such an account of the ceremonial of Charles's election, as is usually published in Germany on like occasions. Scard. Rer. Germ. Script. vol. ii. p. 1. The testimony of Erasmus, lib. xiii. epist. 4, and that of Sleidan, p. 18, are express. Seckendorf, in his Commentarius Historicus et Apologeticus de Lutheranismo, p. 121, has examined this fact with his usual industry, and has established its truth by the most undoubted evidence. To these testimonies which he has collected, I may add the decisive one of Cardinal Cajetan, the pope's legate at Frankfort, in his letter, July 5th, 1519. Epistres des Princes, &c. recueillies par Ruscelli, traduictes par Belforest. Par. 1572, p. 69.

quainted with the art of managing the Germans; and the latter, having been disappointed of a cardinal's hat by Francis, employed all the malicious ingenuity with which the desire for revenge inspires an ambitious mind, in thwarting the measures of that monarch. The Spanish party among the electors daily gained ground; and even the pope's nuncio, being convinced that it was vain to make any further opposition, endeavored to acquire some merit with the future emperor, by offering voluntarily, in the name of his master, a dispensation to hold the imperial crown in conjunction with that of Naples.[70]

On the 28th of June, five months and ten days after the death of Maximilian, this important contest, which had held all Europe in suspense, was decided. Six of the electors had already declared for the king of Spain; and the archbishop of Triers, the only firm adherent to the French interest, having at last joined his brethren, Charles was, by the unanimous voice of the electoral college, raised to the imperial throne.[71]

But though the electors consented, from various motives, to promote Charles to that high station, they discovered at the same time great jealousy of his extraordinary power, and endeavored, with the utmost solicitude, to provide against his encroaching on the privileges of the Germanic body. It

[70] Freheri Rer. German. Scriptores, vol. iii. 172, cur. Struvii. Argent 1717. Giannone, Hist. of Naples, ii. 498.

[71] Jac. Aug. Thuan. Hist. sui Temporis, edit. Bulkley, lib. i. c. 9.

had long been the custom to demand of every new emperor a confirmation of these privileges, and to require a promise that he never would violate them in any instance. While princes who were formidable neither from extent of territory nor of genius possessed the imperial throne, a general and verbal engagement to this purpose was deemed sufficient security. But, under an emperor so powerful as Charles, other precautions seemed necessary. A *capitulation*, or claim of right, was formed, in which the privileges and immunities of the electors, of the princes of the empire, of the cities, and of every other member of the Germanic body, are enumerated. This capitulation was immediately signed by Charles's ambassadors in the name of their master, and he himself, at his coronation, confirmed it in the most solemn manner. Since that period, the electors have continued to prescribe the same conditions to all his successors; and the capitulation, or mutual contract between the emperor and his subjects, is considered in Germany as a strong barrier against the progress of the imperial power, and as the great charter of their liberties, to which they often appeal.[72]

The important intelligence of his election was conveyed in nine days from Frankfort to Barcelona, where Charles was still detained by the obstinacy of the Catalonian cortes, which had not hitherto brought to an issue any of the affairs which came

[72] Pfeffel, Abrégé de l'Hist. du Droit Publique d'Allemagne, 590. Limnei Capitulat. Imper. Epistres des Princes par Ruscelli, p. 60.

before it. He received the account with the joy natural to a young and aspiring mind, on an accession of power and dignity which raised him so far above the other princes of Europe. Then it was that those vast prospects, which allured him during his whole administration, began to open, and from this era we may date the formation, and are able to trace the gradual progress, of a grand system of enterprising ambition, which renders the history of his reign so worthy of attention.

A trivial circumstance first discovered the effects of this great elevation upon the mind of Charles. In all the public writs which he now issued as king of Spain, he assumed the title of *majesty*, and required it from his subjects as a mark of their respect. Before that time, all the monarchs of Europe were satisfied with the appellation of *highness* or *grace;* but the vanity of other courts soon led them to imitate the example of the Spanish. The epithet of majesty is no longer a mark of pre-eminence. The most inconsiderable monarchs in Europe enjoy it, and the arrogance of the greater potentates has invented no higher denominations.[73]

The Spaniards were far from viewing the promotion of their king to the imperial throne with the same satisfaction which he himself felt. To be deprived of the presence of their sovereign, and to be subjected to the government of a viceroy and his council, a species of administration often oppressive

[73] Minianæ Contin. Mar. p. 13. Ferreras, viii. 475. Mémoires, Hist. de la Houssaie, tom. i. p. 53, &c.

and always disagreeable, were the immediate and necessary consequences of this new dignity. To see the blood of their countrymen shed in quarrels wherein the nation had no concern; to behold its treasures wasted in supporting the splendor of a foreign title; to be plunged in the chaos of Italian and German politics, — were effects of this event almost as unavoidable. From all these considerations, they concluded that nothing could have happened more pernicious to the Spanish nation; and the fortitude and public spirit of their ancestors, who, in the cortes of Castile, prohibited Alphonso the Wise from leaving the kingdom in order to receive the imperial crown, were often mentioned with the highest praise, and pronounced to be extremely worthy of imitation at this juncture.[74]

But Charles, without regarding the sentiments or murmurs of his Spanish subjects, accepted of the imperial dignity which the count palatine, at the head of a solemn embassy, offered him in the name of the electors; and declared his intention of setting out soon for Germany, in order to take possession of it. This was the more necessary, because, according to the forms of the German constitution, he could not, before the ceremony of a public coronation, exercise any act of jurisdiction or authority.[75]

Their certain knowledge of this resolution augmented so much the disgust of the Spaniards, that

[74] Sandoval, i. p. 32; Minianæ Contin. p. 14.

[75] Sabinus, P Barre, viii. 1085

a sullen and refractory spirit prevailed among persons of all ranks. The pope having granted the king the tenths of all ecclesiastical benefices in Castile, to assist him in carrying on war with greater vigor against the Turks, a convocation of the clergy unanimously refused to levy that sum, upon pretence that it ought never to be exacted but at those times when Christendom was actually invaded by the infidels; and though Leo, in order to support his authority, laid the kingdom under an interdict, so little regard was paid to a censure which was universally deemed unjust, that Charles himself applied to have it taken off. Thus the Spanish clergy, besides their merit in opposing the usurpations of the pope, and disregarding the influence of the crown, gained the exemption which they had claimed.[76]

The commotions which arose in the kingdom of Valencia, annexed to the crown of Aragon, were more formidable, and produced more dangerous and lasting effects. A seditious monk having by his sermons excited the citizens of Valencia, the capital city, to take arms, and to punish certain criminals in a tumultuary manner, the people, pleased with this exercise of power, and with such a discovery of their own importance, not only refused to lay down their arms, but formed themselves into troops and companies, that they might be regularly trained to martial exercises. To obtain some security against the oppression of the grandees was the motive of

[76] P. Martyr, Ep. 462. Ferreras, viii. 473.

this association, and proved a powerful bond of union; for as the aristocratical privileges and independence were more complete in Valencia than in any other of the Spanish kingdoms, the nobles, being scarcely accountable for their conduct to any superior, treated the people not only as vassals but as slaves. They were alarmed, however, at the progress of this unexpected insurrection, as it might encourage the people to attempt shaking off the yoke altogether; but, as they could not repress them without taking arms, it became necessary to have recourse to the emperor, and to desire his permission to attack them. At the same time the people made choice of deputies to represent their grievances, and to implore the protection of their sovereign. Happily for the latter, they arrived at court when Charles was exasperated to a high degree against the nobility. As he was eager to visit Germany, where his presence became every day more necessary, and as his Flemish courtiers were still more impatient to return into their native country, that they might carry thither the spoils which they had amassed in Castile, it was impossible for him to hold the cortes of Valencia in person. He had for that reason empowered the Cardinal Adrian to represent him in that assembly, and in his name to receive their oath of allegiance, to confirm their privileges with the usual solemnities, and to demand of them a free gift. But the Valencian nobles, who considered this measure as an indignity to their country,

which was no less entitled than his other kingdoms to the honor of their sovereign's presence, declared, that, by the fundamental laws of the constitution, they could neither acknowledge as king a person who was absent, nor grant him any subsidy; and to this declaration they adhered with a haughty and inflexible obstinacy. Charles, piqued by their behavior, decided in favor of the people, and rashly authorized them to continue in arms. Their deputies returned in triumph, and were received by their fellow-citizens as the deliverers of their country. The insolence of the multitude increasing with their success, they expelled all the nobles out of the city, committed the government to magistrates of their own election, and entered into an association, distinguished by the name of *germanada* or *brotherhood*, which proved the source not only of the wildest disorders, but of the most fatal calamities, in that kingdom.[77]

Meanwhile, the kingdom of Castile was agitated with no less violence. No sooner was the emperor's intention to leave Spain made known, than several cities of the first rank resolved to remonstrate against it, and to crave redress once more of those grievances which they had formerly laid before him. Charles artfully avoided admitting their deputies to audience; and as he saw from this circumstance how difficult it would be, at this juncture, to restrain the mutinous spirit of the greater

[77] P. Martyr, Ep. 651. Ferreras, viii. 474. 485.

cities, he summoned the cortes of Castile to meet at Compostella, a town in Galicia. His only reason for calling that assembly was the hope of obtaining another donative; for, as his treasury had been exhausted in the same proportion that the riches of his ministers increased, he could not, without some additional aid, appear in Germany with splendor suited to the imperial dignity. To appoint a meeting of the cortes in so remote a province, and to demand a new subsidy before the time for paying the former was expired, were innovations of a most dangerous tendency; and among a people not only jealous of their liberties, but accustomed to supply the wants of their sovereigns with a very frugal hand, excited an universal alarm. The magistrates of Toledo remonstrated against both these measures in a very high tone: the inhabitants of Valladolid, who expected that the cortes should have been held in that city, were so enraged, that they took arms in a tumultuary manner; and if Charles, with his foreign counsellors, had not fortunately made their escape during a violent tempest, they would have massacred all the Flemings, and have prevented him from continuing his journey towards Compostella.

Every city through which he passed petitioned against holding a cortes in Galicia, a point with regard to which Charles was inflexible. But though the utmost influence had been exerted by the ministers, in order to procure a choice of representatives favorable to their designs, such was

the temper of the nation, that, at the opening of the assembly, there appeared among many of the members unusual symptoms of ill-humor, which threatened a fierce opposition to all the measures of the court. No representatives were sent by Toledo; for the lot, according to which, by ancient custom, the election was determined in that city, having fallen upon two persons devoted to the Flemish ministers, their fellow-citizens refused to grant them a commission in the usual form, and in their stead made choice of two deputies, whom they empowered to repair to Compostella, and to protest against the lawfulness of the cortes assembled there. The representatives of Salamanca refused to take the usual oath of fidelity, unless Charles consented to change the place of meeting. Those of Toro, Madrid, Cordova, and several other places, declared the demand of another donative to be unprecedented, unconstitutional, and unnecessary. All the arts, however, which influence popular assemblies, bribes, promises, threats, and even force, were employed, in order to gain members. The nobles, soothed by the respectful assiduity with which Chièvres and the other Flemings paid court to them, or instigated by a mean jealousy of that spirit of independence which they saw rising among the commons, openly favored the pretensions of the court, or at the utmost did not oppose them; and at last, in contempt not only of the sentiments of the nation, but of the ancient forms of the constitution, a majority voted to grant

the donative for which the emperor had applied.[78] Together with this grant, the cortes laid before Charles a representation of those grievances whereof his people complained, and in their name craved redress; but he, having obtained from them all that he could expect, paid no attention to this ill-timed petition, which it was no longer dangerous to disregard.[79]

As nothing now retarded his embarkation, he disclosed his intention with regard to the regency of Castile during his absence, which he had hitherto kept secret, and nominated Cardinal Adrian to that office. The viceroyalty of Aragon he conferred on Don John de Lanuza; that of Valencia on Don Diego de Mendoza, Conde de Melito. The choice of the two latter was universally acceptable; but the advancement of Adrian, though the only Fleming who had preserved any reputation among the Spaniards, animated the Castilians with new hatred against foreigners; and even the nobles, who had so tamely suffered other inroads upon the constitution, felt the indignity offered to their own order by his promotion, and remonstrated against it as being illegal. But Charles's desire of visiting Germany, as well as the impatience of his ministers to leave Spain, were now so much increased, that, without attending to the murmurs of the Castilians, or even taking time to provide any remedy against an insurrection in Toledo, which at that time threatened, and afterwards

[78] P. Martyr, Ep. 663. Sandoval, p. 32, &c. [79] Sandoval, 84

produced most formidable effects, he sailed from Corunna, on the 22d of May; and, by setting out so abruptly in quest of a new crown, he endangered a more important one of which he was already in possession.[80]

[80] P. Martyr, Ep. 670. Sandov. 86.

BOOK II

Rivalry between Charles and Francis I. for the Empire. — They negotiate with the Pope, the Venetians, and Henry VIII. of England. — Character of the latter. — Cardinal Wolsey. — Charles visits England. — Meeting between Henry VIII. and Francis I. — Coronation of Charles. — Solyman the Magnificent. — The Diet convoked at Worms. — The Reformation. — Sale of Indulgences by Leo X. — Tetzel. — Luther. — Progress of his Opinions. — Is summoned to Rome. — His Appearance before the Legate. — He appeals to a General Council. — Luther questions the Papal Authority. — Reformation in Switzerland. — Excommunication of Luther. — Reformation in Germany. — Causes of the Progress of the Reformation. — The Corruption in the Roman Church. — Power and Ill-Conduct of the Clergy. — Venality of the Roman Court. — Effects of the Invention of Printing. — Erasmus. — The Diet at Worms. — Edict against Luther. — He is seized and confined at Wartburg. — His Doctrines condemned by the University of Paris, and controverted by Henry VIII. of England. — Henry VIII. favors the Emperor Charles against Francis I. — Leo X. makes a Treaty with Charles. — Death of Chièvres. — Hostilities in Navarre and in the Low Countries. — Siege of Mézières. — Congress at Calais. — League against France. — Hostilities in Italy. — Death of Leo X. — Defeat of the French. — Henry VIII. declares War against France. — Charles visits England. — Conquest of Rhodes by Solyman.

MANY concurring circumstances not only called Charles's thoughts towards the affairs of Germany, but rendered his presence in that country necessary.

The electors grew impatient of so long an interregnum; his hereditary dominions were disturbed by intestine commotions; and the new opinions concerning religion made such rapid progress as required the most serious consideration. But, above all, the motions of the French king drew his attention, and convinced him, that it was necessary to take measures for his own defence with no less speed than vigor.

When Charles and Francis entered the lists as candidates for the imperial dignity, they conducted their rivalship with many professions of regard for each other, and with repeated declarations that they would not suffer any tincture of enmity to mingle itself with this honorable emulation. "We both court the same mistress," said Francis, with his usual vivacity; "each ought to urge his suit with all the address of which he is master; the most fortunate will prevail, and the other must rest contented."[1] But though two young and high-spirited princes, and each of them animated with the hope of success, might be capable of forming such a generous resolution, it was soon found that they promised upon a moderation too refined and disinterested for human nature. The preference given to Charles in the sight of all Europe mortified Francis extremely, and inspired him with all the passions natural to disappointed ambition. To this was owing the personal jealousy and rivalship which subsisted between the two monarchs during their

[1] Guic. lib. xiii. p. 159.

whole reign; and the rancor of these, augmented by a real opposition of interest, which gave rise to many unavoidable causes of discord, involved them in almost perpetual hostilities. Charles had paid no regard to the principal article in the treaty of Noyon, by refusing oftener than once to do justice to John d'Albret, the excluded monarch of Navarre, whom Francis was bound in honor and prompted by interest to restore to his throne. The French king had pretensions to the crown of Naples, of which Ferdinand had deprived his predecessor by a most unjustifiable breach of faith. The emperor might reclaim the duchy of Milan as a fief of the empire, which Francis had seized, and still kept in possession, without having received investiture of it from the emperor. Charles considered the duchy of Burgundy as the patrimonial domain of his ancestors, wrested from them by the unjust policy of Louis XI., and observed with the greatest jealousy the strict connections which Francis had formed with the duke of Gueldres, the hereditary enemy of his family.

When the sources of discord were so many and various, peace could be of no long continuance, even between princes the most exempt from ambition or emulation. But as the shock between two such mighty antagonists could not fail of being extremely violent, they both discovered no small solicitude about its consequences, and took time not only to collect and to ponder their own strength, and to compare it with that of their adversary, but to se-

cure the friendship or assistance of the other European powers.

The pope had equal reason to dread the two rivals, and saw that he who prevailed would become absolute master in Italy. If it had been in his power to engage them in hostilities, without rendering Lombardy the theatre of war, nothing would have been more agreeable to him than to see them waste each other's strength in endless quarrels. But this was impossible. Leo foresaw that, on the first rupture between the two monarchs, the armies of France and Spain would take the field in the Milanese; and while the scene of their operations was so near, and the subject for which they contended so interesting to him, he could not long remain neuter. He was obliged, therefore, to adapt his plan of conduct to his political situation. He courted and soothed the emperor and king of France with equal industry and address. Though warmly solicited by each of them to espouse his cause, he assumed all the appearances of entire impartiality, and attempted to conceal his real sentiments under that profound dissimulation which seems to have been affected by most of the Italian politicians in that age.

The views and interests of the Venetians were not different from those of the pope; nor were they less solicitous to prevent Italy from becoming the seat of war, and their own republic from being involved in the quarrel. But through all Leo's artifices, and notwithstanding his high pretensions to

a perfect neutrality, it was visible that he leaned towards the emperor, from whom he had both more to fear and more to hope than from Francis; and it was equally manifest, that, if it became necessary to take a side, the Venetians would, from motives of the same nature, declare for the king of France. No considerable assistance, however, was to be expected from the Italian states, who were jealous to an extreme degree of the Transalpine powers, and careful to preserve the balance even between them, unless when they were seduced to violate this favorite maxim of their policy, by the certain prospect of some great advantage to themselves.

But the chief attention both of Charles and of Francis was employed in order to gain the king of England, from whom each of them expected assistance more effectual, and afforded with less political caution. Henry VIII. had ascended the throne of that kingdom in the year 1509, with such circumstances of advantage as promised a reign of distinguished felicity and splendor. The union in his person of the two contending titles of York and Lancaster, the alacrity and emulation with which both factions obeyed his commands, not only enabled him to exert a degree of vigor and authority in his domestic government, which none of his predecessors could have safely assumed; but permitted him to take a share in the affairs of the Continent, from which the attention of the English had long been diverted by their unhappy intestine divisions. The great sums of money which his father had

amassed, rendered him the most wealthy prince in Europe. The peace which had subsisted under the cautious administration of that monarch had been of sufficient length to recruit the population of the kingdom after the desolation of the civil wars, but not so long as to enervate its spirit; and the English, ashamed of having rendered their own country so long a scene of discord and bloodshed, were eager to display their valor in some foreign war, and to revive the memory of the victories gained on the Continent by their ancestors. Henry's own temper perfectly suited the state of his kingdom, and the disposition of his subjects. Ambitious, active, enterprising, and accomplished in all the martial exercises which in that age formed a chief part in the education of persons of noble birth, and inspired them with an early love of war, he longed to engage in action, and to signalize the beginning of his reign by some remarkable exploit. An opportunity soon presented itself; and the victory at Guinegate, together with the successful sieges of Terouenne and Tournay, though of little utility to England, reflected great lustre on its monarch, and confirmed the idea which foreign princes entertained of his power and consequence. So many concurring causes, added to the happy situation of his own dominions, which secured them from foreign invasion, and to the fortunate circumstance of his being in possession of Calais, which served not only as a key to France, but opened an easy passage into the Netherlands, rendered the king of England the

natural guardian of the liberties of Europe, and the arbiter between the emperor and French monarch. Henry himself was sensible of this singular advantage, and convinced that, in order to preserve the balance even, it was his office to prevent either of the rivals from acquiring such superiority of power as might be fatal to the other, or formidable to the rest of Christendom. But he was destitute of the penetration, and still more of the temper, which such a delicate function required. Influenced by caprice, by vanity, by resentment, by affection, he was incapable of forming any regular and extensive system of policy, or of adhering to it with steadiness. His measures seldom resulted from attention to the general welfare, or from a deliberate regard to his own interest, but were dictated by passions which rendered him blind to both, and prevented his gaining that ascendant in the affairs of Europe, or from reaping such advantages to himself, as a prince of greater art, though with inferior talents, might have easily secured.

All the impolitic steps in Henry's administration must not, however, be imputed to defects in his own character; many of them were owing to the violent passions and insatiable ambition of his prime minister and favorite, Cardinal Wolsey. This man, from one of the lowest ranks in life, had risen to a height of power and dignity to which no English subject ever arrived; and governed the haughty, presumptuous, and untractable spirit of

Henry with absolute authority. Great talents, and of very different kinds, fitted him for the two opposite stations of minister and of favorite. His profound judgment, his unwearied industry, his thorough acquaintance with the state of the kingdom, his extensive knowledge of the views and interest of foreign courts, qualified him for that uncontrolled direction of affairs with which he was intrusted. The elegance of his manners, the gayety of his conversation, his insinuating address, his love of magnificence, and his proficiency in those parts of literature of which Henry was fond, gained him the affection and confidence of the young monarch. Wolsey was far from employing this vast and almost royal power to promote either the true interest of the nation or the real grandeur of his master. Rapacious at the same time, and profuse, he was insatiable in desiring wealth. Of boundless ambition, he aspired after new honors with an eagerness unabated by his former success; and being rendered presumptuous by his uncommon elevation, as well as by the ascendant which he had gained over a prince who scarcely brooked advice from any other person, he discovered in his whole demeanor the most overbearing haughtiness and pride. To these passions he himself sacrificed every consideration; and whoever endeavored to obtain his favor, or that of his master, found it necessary to soothe and to gratify them.

As all the states of Europe sought Henry's friendship at that time, all courted his minister

with incredible attention and obsequiousness, and strove, by presents, by promises, or by flattery, to work upon his avarice, his ambition, or his pride.[2] Francis had, in the year 1518, employed Bonnivet, admiral of France, one of his most accomplished and artful courtiers, to gain this haughty prelate. He himself bestowed on him every mark of respect and confidence. He consulted him with regard to his most important affairs, and received his responses with implicit deference. By these arts, together with the grant of a large pension, Francis attached the cardinal to his interest, who persuaded his master to surrender Tournay to France, to conclude a treaty of marriage between his daughter, the princess Mary, and the dauphin, and to consent to a personal interview with the French king.[3] From that time, the most familiar intercourse subsisted between the two courts; Francis, sensible of the great value of Wolsey's friendship, labored to secure the continuance of it by every possible expression of regard, bestowing on him, in all his letters, the honorable appellations of father, tutor, and governor.

Charles observed the progress of this union with the utmost jealousy and concern. His near affinity to the king of England gave him some title to his friendship; and soon after his accession to the throne of Castile, he had attempted to ingratiate himself with Wolsey, by settling on him a pen-

[2] Fiddes's Life of Wolsey, 166. Rymer's Fœdera, xiii. 718.

[3] Herbert's Hist. of Henry VIII. 30. Rymer, xiii. 624.

sion of three thousand livres. His chief solicitude at present was to prevent the intended interview with Francis, the effects of which upon two young princes, whose hearts were no less susceptible of friendship than their manners were capable of inspiring it, he extremely dreaded. But after many delays, occasioned by difficulties with respect to the ceremonial, and by the anxious precautions of both courts for the safety of their respective sovereigns, the time and place of meeting were at last fixed. Messengers had been sent to different courts, inviting all comers, who were gentlemen, to enter the lists at tilt and tournament, against the two monarchs and their knights. Both Francis and Henry loved the splendor of these spectacles too well, and were too much delighted with the graceful figure which they made on such occasions, to forego the pleasure or glory which they expected from such a singular and brilliant assembly. Nor was the cardinal less fond of displaying his own magnificence in the presence of two courts, and of discovering to the two nations the extent of his influence over both their monarchs. Charles, finding it impossible to prevent the interview, endeavored to disappoint its effects, and to preoccupy the favor of the English monarch and his minister by an act of complaisance still more flattering and more uncommon. Having sailed from Corunna, as has already been related, he steered his course directly towards England, and, relying wholly on Henry's generosity for his own safety, landed at

Dover. This unexpected visit surprised the nation. Wolsey, however, was well acquainted with the emperor's intention. A negotiation, unknown to the historians of that age, had been carried on between him and the court of Spain; this visit had been concerted; and Charles granted the cardinal, whom he calls his *most dear friend*, an additional pension of seven thousand ducats.[4] Henry, who was then at Canterbury, in his way to France, immediately despatched Wolsey to Dover, in order to welcome the emperor; and being highly pleased with an event so soothing to his vanity, hastened to receive, with suitable respect, a guest who had placed in him such unbounded confidence. Charles, to whom time was precious, stayed only four days in England; but during that short space, he had the address, not only to give Henry favorable impressions of his character and intentions, but to detach Wolsey entirely from the interest of the French king. All the grandeur, the wealth, and the power, which the cardinal possessed, did not satisfy his ambitious mind, while there was one step higher to which an ecclesiastic could ascend. The papal dignity had for some time been the object of his wishes; and Francis, as the most effectual method of securing his friendship, had promised to favor his pretensions, on the first vacancy, with all his interest. But as the emperor's influence in the college of cardinals was greatly superior to that of the French king, Wolsey

[4] Rymer, xiii. 714.

grasped eagerly at the offer which that artful prince had made him, of exerting it vigorously in his behalf; and, allured by this prospect, which, under the pontificate of Leo, still in the prime of his life, was a very distant one, he entered with warmth into all the emperor's schemes. No treaty, however, was concluded at that time between the two monarchs; but Henry, in return for the honor which Charles had done him, promised to visit him in some place of the Low Countries immediately after taking leave of the French king.

His interview with that prince was in an open plain between Guisnes and Ardres, where the two kings and their attendants displayed their magnificence with such emulation, and profuse expense, as procured it the name of the *Field of the Cloth of Gold.* Feats of chivalry, parties of gallantry, together with such exercises and pastimes as were in that age reckoned manly or elegant, rather than serious business, occupied both courts during eighteen days that they continued together.[5] What-

[5] The French and English historians describe the pomp of this interview, and the various spectacles, with great minuteness. One circumstance mentioned by the Maréschal de Fleuranges, who was present, and which must appear singular in the present age, is commonly omitted. "After the tournament," says he, "the French and English wrestlers made their appearance, and wrestled in presence of the kings and the ladies; and as there were many stout wrestlers there, it afforded excellent pastime; but as the king of France had neglected to bring any wrestlers out of Bretagne, the English gained the prize. After this, the kings of France and England retired to a tent, where they drank together, and the king of England, seizing the king of France by the collar, said, '*My brother, I must wrestle with you,*' and endeavored once or twice to trip up his heels; but the king

ever impression the engaging manners of Francis, or the liberal and unsuspicious confidence with which he treated Henry, made on the mind of that monarch, was soon effaced by Wolsey's artifices, or by an interview he had with the emperor at Gravelines, which was conducted with less pomp than that near Guisnes, but with greater attention to what might be of political utility.

This assiduity with which the two greatest monarchs in Europe paid court to Henry, appeared to him a plain acknowledgment that he held the balance in his hands, and convinced him of the justness of the motto he had chosen, — "That whoever he favored would prevail." In this opinion he was confirmed by an offer which Charles made, of submitting any difference that might arise between him and Francis to his sole arbitration. Nothing could have the appearance of greater candor and moderation, than the choice of a judge who was reckoned the common friend of both. But as the emperor had now attached Wolsey entirely to his interest, no proposal could be more insidious, nor, as appeared by the sequel, more fatal to the French king.[6]

Charles, notwithstanding his partial fondness for the Netherlands, the place of his nativity, made no long stay there, and, after receiving the homage

of France, who is a dexterous wrestler, twisted him round, and threw him on the earth with prodigious violence. The king of England wanted to renew the combat, but was prevented." *Mémoires de Fleuranges*, 12°, Paris, 1753, p. 329.

[6] Herbert, 37.

and congratulations of his countrymen, hastened to Aix-la-Chapelle, the place appointed by the golden bull for the coronation of the emperor. There, in presence of an assembly more numerous and splendid than had appeared on any former occasion, the crown of Charlemagne was placed on his head, with all the pompous solemnity which the Germans affect in their public ceremonies, and which they deem essential to the dignity of their empire.[7]

Almost at the same time Solyman the Magnificent, one of the most accomplished, enterprising, and victorious of the Turkish sultans, a constant and formidable rival to the emperor, ascended the Ottoman throne. It was the peculiar glory of that period to produce the most illustrious monarchs who have at any one time appeared in Europe. Leo, Charles, Francis, Henry, and Solyman were each of them possessed of talents that might have rendered any age wherein they happened to flourish conspicuous. But such a constellation of great princes shed uncommon lustre on the sixteenth century. In every contest great power, as well as great abilities, were set in opposition; the efforts of valor and conduct on one side, counterbalanced by an equal exertion of the same qualities on the other, not only occasioned such a variety of events as renders the history of that period interesting, but served to check the exorbitant progress of

[7] Hartman. Mauri Relatio Coronat. Car. V. ap. Goldast. Polit. Imperial. Franc. 1614, fol. p. 264.

any of those princes, and to prevent their attaining such pre-eminence in power as would have been fatal to the liberty and happiness of mankind.

The first act of the emperor's administration was to appoint a diet of the empire to be held at Worms, on the 6th of January, 1521. In his circular letters to the different princes, he informed them that he had called this assembly in order to concert with them the most proper measures for checking the progress of those new and dangerous opinions, which threatened to disturb the peace of Germany, and to overturn the religion of their ancestors.

Charles had in view the opinions which had been propagated by Luther and his disciples since the year 1517. As these led to that happy reformation in religion which rescued one part of Europe from the papal yoke, mitigated its rigor in the other, and produced a revolution in the sentiments of mankind, the greatest, as well as the most beneficial, that has happened since the publication of Christianity, not only the events which at first gave birth to such opinions, but the causes which rendered their progress so rapid and successful, deserve to be considered with minute attention.

To overturn a system of religious belief, founded on ancient and deep-rooted prejudices, supported by power, and defended with no less art than industry; to establish in its room doctrines of the most contrary genius and tendency; and to accomplish all this, not by external violence or the force

of arms, are operations which historians, the least prone to credulity and superstition, ascribe to that Divine Providence which, with infinite ease, can bring about events which to human sagacity appear impossible. The interposition of Heaven in favor of the Christian religion at its first publication, was manifested by miracles and prophecies wrought and uttered in confirmation of it. Though none of the Reformers possessed, or pretended to possess, these supernatural gifts, yet that wonderful preparation of circumstances which disposed the minds of men for receiving their doctrines, — that singular combination of causes which secured their success, and enabled men destitute of power and of policy to triumph over those who employed against them extraordinary efforts of both, — may be considered as no slight proof, that the same hand which planted the Christian religion protected the Reformed faith, and reared it from beginnings extremely feeble, to an amazing degree of vigor and maturity.

It was from causes seemingly fortuitous, and from a source very inconsiderable, that all the mighty effects of the Reformation flowed. Leo X., when raised to the papal throne, found the revenues of the Church exhausted by the vast projects of his two ambitious predecessors, Alexander VI. and Julius II. His own temper, naturally liberal and enterprising, rendered him incapable of that severe and patient economy which the situation of his finances required. On the contrary,

his schemes for aggrandizing the family of Medici, his love of splendor, his taste for pleasure, and his magnificence in rewarding men of genius, involved him daily in new expenses; in order to provide a fund for which, he tried every device that the fertile invention of priests had fallen upon, to drain the credulous multitude of their wealth. Among others, he had recourse to a sale of *indulgences*. According to the doctrine of the Romish Church, all the good works of the saints, over and above those which were necessary towards their own justification, are deposited, together with the infinite merits of Jesus Christ, in one inexhaustible treasury. The keys of this were committed to St. Peter, and to his successors the popes, who may open it at pleasure, and, by transferring a portion of this superabundant merit to any particular person for a sum of money, may convey to him either the pardon of his own sins, or a release for any one in whose happiness he is interested from the pains of purgatory. Such indulgences were first invented in the eleventh century by Urban II. as a recompense for those who went in person upon the meritorious enterprise of conquering the Holy Land. They were afterwards granted to those who hired a soldier for that purpose, and in process of time were bestowed on such as gave money for accomplishing any pious work enjoined by the pope.[8] Julius II. had bestowed indulgences on all who contributed towards building the church of St.

[8] History of the Council of Trent, by F. Paul, p. 4.

Peter at Rome; and as Leo was carrying on that magnificent and expensive fabric, his grant was founded on the same pretence.[9]

The right of promulgating these indulgences in Germany, together with a share in the profits arising from the sale of them, was granted to Albert, elector of Mentz and archbishop of Magdeburg, who, as his chief agent for retailing them in Saxony, employed Tetzel, a Dominican friar, of licentious morals, but of an active spirit, and remarkable for his noisy and popular eloquence. He, assisted by the monks of his order, executed the commission with great zeal and success, but with little discretion or decency; and though, by magnifying excessively the benefit of their indulgences,[10] and by disposing of them at a very low

9 Palavic. Hist. Conc. Trident. p. 4.

10 As the form of these indulgences, and the benefits which they were supposed to convey, are unknown in Protestant countries, and little understood, at present, in several places where the Roman Catholic religion is established, I have, for the information of my readers, translated the form of absolution used by Tetzel: "May our Lord Jesus Christ have mercy upon thee, and absolve thee by the merits of his most holy passion. And I, by his authority, that of his blessed Apostles Peter and Paul, and of the most holy pope, granted and committed to me in these parts, do absolve thee, first from all ecclesiastical censures, in whatever manner they have been incurred, and then from all thy sins, transgressions, and excesses, how enormous soever they may be, even from such as are reserved for the cognizance of the holy see; and as far as the keys of the Holy Church extend, I remit to you all punishment which you deserve in purgatory on their account, and I restore you to the holy sacraments of the Church, to the unity of the faithful, and to that innocence and purity which you possessed at baptism; so that, when you die, the gates of punishment shall be shut, and the gates of the paradise of delight shall be opened; and if

price, they carried on for some time an extensive and lucrative traffic among the credulous and the ignorant; the extravagance of their assertions, as well as the irregularities in their conduct, came at last to give general offence. The princes and nobles were irritated at seeing their vassals drained of so much wealth, in order to replenish the treasury of a profuse pontiff. Men of piety regretted the delusion of the people, who, being taught to rely for the pardon of their sins on the indulgences

you shall not die at present, this grace shall remain in full force when you are at the point of death. In the name of the Father, and of the Son, and of the Holy Ghost." — *Seckend. Comment.* lib. i. p. 14.

The terms in which Tetzel and his associates described the benefits of indulgences, and the necessity of purchasing them, are so extravagant, that they appear to be almost incredible. If any man (said they) purchase letters of indulgence, his soul may rest secure with respect to its salvation. The souls confined in purgatory, for whose redemption indulgences are purchased, as soon as the money tinkles in the chest, instantly escape from that place of torment, and ascend into heaven. That the efficacy of indulgences was so great, that the most heinous sins, even if one should violate (which was impossible) the mother of God, would be remitted and expiated by them, and the person be freed both from punishment and guilt. That this was the unspeakable gift of God, in order to reconcile men to himself. That the cross erected by the preachers of indulgences was as efficacious as the cross of Christ itself. Lo! the heavens are open; if you enter not now, when will you enter? For twelve pence you may redeem the soul of your father out of purgatory; and are you so ungrateful, that you will not rescue your parent from torment? If you had but one coat, you ought to strip yourself instantly, and sell it, in order to purchase such benefits, &c. These, and many such extravagant expressions, are selected out of Luther's works by Chemnitius in his Examen Concilii Tridentini, apud Herm. Von der Hardt. Hist. Liter. Reform. pars iv. p. 6. The same author has published several of Tetzel's discourses, which prove that these expressions were neither singular nor exaggerated. — *Ibid.* p. 14.

which they purchased, did not think it incumbent on them either to study the doctrines taught by genuine Christianity, or to practise the duties which it enjoins. Even the most unthinking were shocked at the scandalous behavior of Tetzel and his associates, who often squandered, in drunkenness, gaming, and low debauchery, those sums which were piously bestowed in hopes of obtaining eternal happiness; and all began to wish that some check were given to this commerce, no less detrimental to society than destructive to religion.

Such was the favorable juncture, and so disposed were the minds of his countrymen to listen to his discourses, when Martin Luther first began to call in question the efficacy of indulgences, and to declaim against the vicious lives and false doctrines of the persons employed in promulgating them. Luther was a native of Eisleben, in Saxony, and, though born of poor parents, had received a learned education, during the progress of which he gave many indications of uncommon vigor and acuteness of genius. His mind was naturally susceptible of serious sentiments, and tinctured with somewhat of that religious melancholy which delights in the solitude and devotion of a monastic life. The death of a companion, killed by lightning at his side in a violent thunder-storm, made such an impression on his mind, as co-operated with his natural temper in inducing him to retire into a convent of Augustinian friars, where, without suf-

fering the entreaties of his parents to divert him from what he thought his duty to God, he assumed the habit of that order. He soon acquired great reputation, not only for piety, but for his love of knowledge, and his unwearied application to study. He had been taught the scholastic philosophy and theology, which were then in vogue, by very able masters, and wanted not penetration to comprehend all the niceties and distinctions with which they abound; but his understanding, naturally sound, and superior to everything frivolous, soon became disgusted with those subtile and uninstructive sciences, and sought for some more solid foundation of knowledge and of piety in the Holy Scriptures. Having found a copy of the Bible, which lay neglected in the library of his monastry, he abandoned all other pursuits, and devoted himself to the study of it, with such eagerness and assiduity as astonished the monks, who were little accustomed to derive their theological notions from that source. The great progress which he made in this uncommon course of study, augmented so much the fame both of his sanctity and of his learning, that, Frederic, elector of Saxony, having founded a university at Wittemberg on the Elbe, the place of his residence, Luther was chosen first to teach philosophy, and afterwards theology, there; and discharged both offices in such a manner, that he was deemed the chief ornament of that society.

While Luther was at the height of his reputation and authority, Tetzel began to publish indul-

gences in the neighborhood of Wittemberg; and to ascribe to them the same imaginary virtues which had, in other places, imposed on the credulity of the people. As Saxony was not more enlightened than the other provinces of Germany, Tetzel met with prodigious success there. It was with the utmost concern that Luther beheld the artifices of those who sold, and the simplicity of those who bought, indulgences. The opinions of Thomas Aquinas and the other schoolmen, on which the doctrine of indulgences was founded, had already lost much of their authority with him; and the Scriptures, which he began to consider as the great standard of theological truth, afforded no countenance to a practice equally subversive of faith and of morals. His warm and impetuous temper did not suffer him long to conceal such important discoveries, or to continue a silent spectator of the delusion of his countrymen. From the pulpit, in the great church of Wittemberg, he inveighed bitterly against the irregularities and vices of the monks who published indulgences; he ventured to examine the doctrines which they taught, and pointed out to the people the danger of relying for salvation upon any other means than those appointed by God in his word. The boldness and novelty of these opinions drew great attention, and being recommended by the authority of Luther's personal character, and delivered with a popular and persuasive eloquence, they made a deep impression on his hearers. Encouraged by the favorable reception of his doctrines

among the people, he wrote to Albert, elector of Mentz and archbishop of Magdeburg, to whose jurisdiction that part of Saxony was subject, and remonstrated warmly against the false opinions, as well as wicked lives, of the preachers of indulgences; but he found that prelate too deeply interested in their success to correct their abuses. His next attempt was to gain the suffrage of men of learning. For this purpose he published ninety-five theses, containing his sentiments with regard to indulgences. These he proposed, not as points fully established or of undoubted certainty, but as subjects of inquiry and disputation; he appointed a day on which the learned were invited to impugn them, either in person or by writing; to the whole he subjoined solemn protestations of his high respect for the apostolic see, and of his implicit submission to its authority. No opponent appeared at the time prefixed; the theses spread over Germany with astonishing rapidity; they were read with the greatest eagerness; and all admired the boldness of the man who had ventured, not only to call in question the plenitude of papal power, but to attack the Dominicans, armed with all the terrors of inquisitorial authority.[11]

The friars of St. Augustine, Luther's own order, though addicted with no less obsequiousness than the other monastic fraternities to the papal see, gave no check to the publication of these uncom-

[11] Lutheri Opera, Jenæ, 1612, vol. i. præfat. 3, p. 2. 66. Hist. of Council of Trent, by F. Paul, p. 4. Seckend. Com. Apol. p. 16.

mon opinions. Luther had, by his piety and learning, acquired extraordinary authority among his brethren; he professed the highest regard for the authority of the pope; his professions were at that time sincere; and as a secret enmity, excited by interest or emulation, subsists among all the monastic orders in the Romish Church, the Augustinians were highly pleased with his invectives against the Dominicans, and hoped to see them exposed to the hatred and scorn of the people. Nor was his sovereign, the elector of Saxony, the wisest prince at that time in Germany, dissatisfied with this obstruction which Luther threw in the way of the publication of indulgences. He secretly encouraged the attempt, and flattered himself that this dispute among the ecclesiastics themselves might give some check to the exactions of the court of Rome, which the secular princes had long, though without success, been endeavoring to oppose.

Many zealous champions immediately arose to defend opinions on which the wealth and power of the Church were founded, against Luther's attacks. In opposition to his theses, Tetzel published counter theses at Frankfort on the Oder; Eccius, a celebrated divine of Augsburg, endeavored to refute Luther's notions; and Prierias, a Dominican friar, master of the sacred palace, and inquisitor-general, wrote against him with all the virulence of a scholastic disputant. But the manner in which they conducted the controversy did little service to their cause. Luther attempted to combat indulgences

by arguments founded in reason, or derived from Scripture; they produced nothing in support of them but the sentiments of schoolmen, the conclusions of the canon law, and the decrees of popes.[12] The decision of judges so partial and interested did not satisfy the people, who began to call in question the authority even of these venerable guides, when they found them standing in direct opposition to the dictates of reason, and the determinations of the Divine law.[13]

[12] F. Paul, p. 6. Seckend. p. 40. Palavic. p. 8.

[13] Seckend. p. 30.

Guicciardini has asserted two things with regard to the first promulgation of indulgences: — 1. That Leo bestowed a gift of the profits arising from the sale of indulgences in Saxony, and the adjacent provinces of Germany, upon his sister Magdalen, the wife of Francescetto Cibo. *Guic.* lib. xiii. 168. 2. That Arcemboldo, a Genoese ecclesiastic, who had been bred a merchant, and still retained all the activity and address of that profession, was appointed by her to collect the money which should be raised. F. Paul has followed him in both these particulars; and adds, that the Augustinians in Saxony had been immemorially employed in preaching indulgences; but that Arcemboldo and his deputies, hoping to gain more by committing this trust to the Dominicans, had made their bargain with Tetzel, and that Luther was prompted at first to oppose Tetzel and his associates by a desire of taking revenge for this injury offered to his order. *F. Paul*, p. 5. Almost all historians since their time, Popish as well as Protestant, have, without examination, admitted these assertions to be true upon their authority. But, notwithstanding the concurring testimony of two authors so eminent both for exactness and veracity, we may observe, —

1. That Felix Contolori, who searched the pontifical archives for the purpose, could not find this pretended grant to Leo's sister in any of those registers where it must necessarily have been recorded. *Palav.* p. 5. — 2. That the profits arising from indulgences in Saxony and the adjacent countries had been granted, not to Magdalen, but to Albert, archbishop of Mentz, who had the right of nominating those who published them. *Seck.* p. 12. *Luth. Oper.* i. *Præf.* p. i. *Palav.* p. 6. —

Meanwhile, these novelties in Luther's doctrines, which interested all Germany, excited little attention and no alarm in the court of Rome. Leo, fond of elegant and refined pleasures, intent upon great schemes of policy, a stranger to theological controversies, and apt to despise them, regarded with the utmost indifference the operations of an obscure friar, who, in the heart of Germany, carried on a scholastic disputation in a barbarous style. Little did he apprehend, or Luther himself dream, that the effects of this quarrel would be so fatal to the

3. That Arcemboldo never had concern in the publication of indulgences in Saxony: his district was Flanders and the Upper and Lower Rhine. *Seck.* p. 14. *Palav.* p. 6. — 4. That Luther and his adherents never mentioned this grant of Leo's to his sister, though a circumstance of which they could hardly have been ignorant, and which they would have been careful not to suppress. — 5. The publication of indulgences in Germany was not usually committed to the Augustinians. The promulgation of them, at three different periods under Julius II., was granted to the Franciscans; the Dominicans had been employed in the same office a short time before the present period. *Palav.* p. 46. — 6. The promulgation of those indulgences which first excited Luther's indignation, was entrusted to the archbishop of Mentz, in conjunction with the guardian of the Franciscans; but the latter having declined accepting of that trust, the sole right became vested in the archbishop. *Palav.* 6. *Seck.* 16, 17. — 7. Luther was not instigated by his superiors among the Augustinians to attack the Dominicans, their rivals, or to depreciate indulgences because they were promulgated by them; his opposition to their opinions and vices proceeded from more laudable motives. *Seck.* p. 15, 32. *Lutheri Opera*, i. p. 64. 6. — 8. A diploma of indulgences is published by Herm. Von der Hardt, from which it appears, that the name of the guardian of the Franciscans is retained together with that of the archbishop, although the former did not act. The limits of the country to which their commission extended, namely, the diocese of Mentz, Magdeburg, Halberstadt, and the territories of the marquis of Brandenburg, are mentioned in that diploma. *Hist. Literaria Reformat.* pars iv. p. 14.

papal see. Leo imputed the whole to monastic enmity and emulation, and seemed inclined not to interpose in the contest, but to allow the Augustinians and Dominicans to wrangle about the matter with their usual animosity.

The solicitations, however, of Luther's adversaries, who were exasperated to a high degree by the boldness and severity with which he animadverted on their writings, together with the surprising progress which his opinions made in different parts of Germany, roused at last the attention of the court of Rome, and obliged Leo to take measures for the security of the Church against an attack that now appeared too serious to be despised. For this end, he summoned Luther to appear at Rome, within sixty days, before the auditor of the chamber and the inquisitor-general, Prierias, who had written against him, whom he empowered jointly to examine his doctrines, and to decide concerning them. He wrote, at the same time, to the elector of Saxony, beseeching him not to protect a man whose heretical and profane tenets were so shocking to pious ears; and enjoined the provincial of the Augustinians to check, by his authority, the rashness of an arrogant monk, which brought disgrace upon the order of St. Augustine, and gave offence and disturbance to the whole Church. [1518.]

From the strain of these letters, as well as from the nomination of a judge so prejudiced and partial as Prierias, Luther easily saw what sentence he might expect at Rome. He discovered, for that

reason, the utmost solicitude to have his cause tried in Germany, and before a less suspected tribunal. The professors in the university of Wittemberg, anxious for the safety of a man who did so much honor to their society, wrote to the pope; and, after employing several pretexts to excuse Luther from appearing at Rome, entreated Leo to commit the examination of his doctrines to some persons of learning and authority in Germany. The elector requested the same thing of the pope's legate at the diet of Augsburg; and as Luther himself, who, at that time, was so far from having any intention to disclaim the papal authority, that he did not even entertain the smallest suspicion concerning its divine original, had written to Leo a most submissive letter, promising an unreserved compliance with his will; the pope gratified them so far as to empower his legate in Germany, Cardinal Cajetan, a Dominican, eminent for scholastic learning, and passionately devoted to the Roman see, to hear and determine the cause.

Luther, though he had good reason to decline a judge chosen among his avowed adversaries, did not hesitate about appearing before Cajetan; and, having obtained the emperor's safe-conduct, immediately repaired to Augsburg. The cardinal received him with decent respect, and endeavored at first to gain upon him by gentle treatment. The cardinal, relying on the superiority of his own talents as a theologian, entered into a formal dispute with Luther concerning the doctrines contained in his the-

ses.[14] But the weapons which they employed were so different, Cajetan appealing to papal decrees and the opinions of schoolmen, and Luther resting entirely on the authority of Scripture, that the contest was altogether fruitless. The cardinal relinquished the character of a disputant, and, assuming that of a judge, enjoined Luther, by virtue of the apostolic powers with which he was clothed, to retract the errors which he had uttered with regard to indulgences and the nature of faith; and to abstain, for the future, from the publication of new and dangerous opinions. Luther, fully persuaded of the truth of his own tenets, and confirmed in the belief of them by the approbation which they had met with among persons conspicuous both for learning and piety, was surprised at this abrupt mention of a recantation, before any endeavors were used to convince him that he was mistaken. He had flattered himself, that, in a conference concerning the points in dispute with a prelate of such distinguished abilities, he should be able to remove many of those imputations with which the ignorance or malice of his antagonists had loaded him; but the high tone of authority that the cardinal assumed extinguished at once all hopes of this kind, and cut off every prospect of advantage from the interview. His native intrepidity of mind, however, did not

[14] In the former editions I asserted, upon the authority of Father Paul, that Cajetan thought it beneath his dignity to enter into any dispute with Luther; but M. Beausobre, in his Histoire de la Réformation, vol. i. p. 121, &c., has satisfied me that I was mistaken. See also Seckend. lib. i. p. 46, &c.

desert him. He declared with the utmost firmness, that he could not, with a safe conscience, renounce opinions which he believed to be true; nor should any consideration ever induce him to do what would be so base in itself and so offensive to God. At the same time, he continued to express no less reverence than formerly for the authority of the apostolic see;[15] he signified his willingness to submit the whole controversy to certain universities which he named, and promised neither to write nor to preach concerning indulgences for the future, provided his adversaries were likewise enjoined to be silent with respect to them.[16] All these offers Cajetan disregarded or rejected, and still insisted peremptorily on a simple recantation, threatening him with ecclesiastical censures, and forbidding him to appear again in his presence unless he resolved instantly to comply with what he had required. This haughty and violent manner of proceeding, as well as other circumstances, gave Luther's friends such strong reasons to suspect that even the imperial safe-conduct would not be able to protect him from the legate's power and resentment, that they prevailed on him to withdraw secretly from Augsburg, and to return to his own country. But before his departure, according to a form of which there had been some examples, he prepared a solemn appeal from the pope, ill-informed at that time concerning his cause, to the pope when he should receive more full information with respect to it.[17]

[15] Luth. Oper. vol. i. p. 164. [16] Ibid. p. 160.

[17] Sleid. Hist. of Reform. p. 7. Seckend. p. 45. Luth. Oper. i. 163.

Cajetan, enraged at Luther's abrupt retreat, and at the publication of his appeal, wrote to the elector of Saxony, complaining of both; and requiring him, as he regarded the peace of the Church, or the authority of its head, either to send that seditious monk a prisoner to Rome, or to banish him out of his territories. It was not from theological considerations that Frederic had hitherto countenanced Luther; he seems to have been much a stranger to controversies of that kind, and to have been little interested in them. His protection flowed almost entirely, as hath been already observed, from political motives, and was afforded with great secrecy and caution. He had neither heard any of Luther's discourses, nor read any of his books; and though all Germany resounded with his fame, he had never once admitted him into his presence.[18] But upon this demand which the cardinal made, it became necessary to throw off somewhat of his former reserve. He had been at great expense, and had bestowed much attention on founding a new university, an object of considerable importance to every German prince; and foreseeing how fatal a blow the removal of Luther would be to its reputation,[19] he, under various pretexts, and with many professions of esteem for the cardinal, as well as of reverence for the pope, not only declined complying with either of his requests, but openly discovered great concern for Luther's safety.[20]

[18] Seckend. p. 27. Sleid. Hist. p. 12. [19] Seckend. p. 59.
[20] Sleid. Hist. p. 10. Luth. Oper. i. 172.

The inflexible rigor with which Cajetan insisted on a simple recantation, gave great offence to Luther's followers in that age, and hath since been censured as imprudent by several popish writers. But it was impossible for the legate to act another part. The judges before whom Luther had been required to appear at Rome, were so eager to display their zeal against his errors, that, without waiting for the expiration of sixty days allowed him in the citation, they had already condemned him as a heretic.[21] Leo had, in several of his briefs and letters, stigmatized him as a child of iniquity, and a man given up to a reprobate sense. Nothing less, therefore, than a recantation could save the honor of the Church, whose maxim it is, never to abandon the smallest point that it has established, and which is even precluded, by its pretensions to infallibility, from having it in its power to do so.

Luther's situation, at this time, was such as would have filled any other person with the most disquieting apprehensions. He could not expect that a prince so prudent and cautious as Frederic would, on his account, set at defiance the thunders of the Church, and brave the papal power, which had crushed some of the most powerful of the German emperors. He knew what veneration was paid, in that age, to ecclesiastical decisions; what terrors ecclesiastical censures carried along with them, and how easily these might intimidate and shake a prince, who was rather his protector from policy,

[21] Luther. Oper. i. 161.

than his disciple from conviction. If he should be obliged to quit Saxony, he had no prospect of any other asylum, and must stand exposed to whatever punishment the rage or bigotry of his enemies could inflict. Though sensible of his danger, he discovered no symptoms of timidity or remissness, but continued to vindicate his own conduct and opinions, and to inveigh against those of his adversaries with more vehemence than ever.[22]

But as every step taken by the court of Rome, particularly the irregular sentence by which he had been so precipitately declared a heretic, convinced Luther that Leo would soon proceed to the most violent measures against him, he had recourse to the only expedient in his power, in order to prevent the effect of the papal censures. He appealed to a general council, which he affirmed to be the representative of the Catholic Church, and superior in power to the pope, who, being a fallible man, might err, as St. Peter, the most perfect of his predecessors, had erred.[23]

It soon appeared, that Luther had not formed rash conjectures concerning the intentions of the Romish Church. A bull of a date prior to his appeal was issued by the pope, in which he magnifies the virtue and efficacy of indulgences, in terms as extravagant as any of his predecessors had ventured to use in the darkest ages; and without applying such palliatives, or mentioning such con-

[22] Seckend. p. 59.

[23] Sleid. Hist. 12. Luth. Oper. i. 179.

cessions, as a more enlightened period, and the disposition in the minds of many men at that juncture, seemed to call for, he required all Christians to assent to what he delivered as the doctrine of the Catholic Church, and subjected those who should hold or teach any contrary opinion to the heaviest ecclesiastical censures.

Among Luther's followers, this bull, which they considered as an unjustifiable effort of the pope, in order to preserve that rich branch of his revenue which arose from indulgences, produced little effect. But among the rest of his countrymen, such a clear decision of the sovereign pontiff against him, and enforced by such dreadful penalties, must have been attended with consequences very fatal to his cause, if these had not been prevented in a great measure by the death of the Emperor Maximilian, whom both his principles and his interest prompted to support the authority of the holy see. In consequence of this event, the vicariat of that part of Germany which is governed by the Saxon laws, devolved to the elector of Saxony; and under the shelter of his friendly administration, Luther not only enjoyed tranquillity, but his opinions were suffered, during the interregnum which preceded Charles's election, to take root in different places, and to grow up to some degree of strength and firmness. At the same time, as the election of an emperor was a point more interesting to Leo than a theological controversy, which he did not understand, and of which he could not foresee the con-

sequences, he was so extremely solicitous not to irritate a prince of such considerable influence in the electoral college as Frederic, that he discovered a great unwillingness to pronounce the sentence of excommunication against Luther, which his adversaries continually demanded with the most clamorous importunity.

To these political views of the pope, as well as to his natural aversion from severe measures, was owing the suspension of any further proceedings against Luther for eighteen months. Perpetual negotiations, however, in order to bring the matter to some amicable issue, were carried on during that space. The manner in which these were conducted having given Luther many opportunities of observing the corruption of the court of Rome, its obstinacy in adhering to established errors, and its indifference about truth, however clearly proposed or strongly proved, he began to utter some doubts with regard to the divine original of the papal authority. A public disputation was held upon this important question at Leipsic, between Luther and Eccius, one of his most learned and formidable antagonists; but it was as fruitless and indecisive as such scholastic combats usually prove. Both parties boasted of having obtained the victory; both were confirmed in their own opinions; and no progress was made towards deciding the point in controversy.[24]

Nor did the spirit of opposition to the doctrines

[24] Luth. Oper. i. 199.

and usurpations of the Romish Church break out in Saxony alone: an attack no less violent, and occasioned by the same causes, was made upon them about this time in Switzerland. The Franciscans, being intrusted with the promulgation of indulgences in that country, executed their commission with the same indiscretion and rapaciousness which had rendered the Dominicans so odious in Germany. They proceeded, nevertheless, with uninterrupted success, till they arrived at Zurich. There Zuinglius, a man not inferior to Luther himself in zeal and intrepidity, ventured to oppose them; and being animated with a republican boldness, and free from those restraints which subjection to the will of a prince imposed on the German Reformer, he advanced with more daring and rapid steps to overturn the whole fabric of the established religion.[25] The appearance of such a vigorous auxiliary, and the progress which he made, was, at first, matter of great joy to Luther. On the other hand, the decrees of the Universities of Cologne and Louvain, which pronounced his opinions to be erroneous, afforded great cause of triumph to his adversaries.

But the undaunted spirit of Luther acquired additional fortitude from every instance of opposition; and pushing on his inquiries and attacks from one doctrine to another, he began to shake the firmest foundations on which the wealth or power of the Church was established. Leo came at last to be

[25] Sleid. Hist. 22. Seckend. 59.

convinced that all hopes of reclaiming him by forbearance were vain; several prelates of great wisdom exclaimed, no less than Luther's personal adversaries, against the pope's unprecedented lenity in permitting an incorrigible heretic, who, during three years, had been endeavoring to subvert everything sacred and venerable, still to remain within the bosom of the Church; the dignity of the papal see rendered the most vigorous proceedings necessary; the new emperor, it was hoped, would support its authority; nor did it seem probable that the elector of Saxony would so far forget his usual caution, as to set himself in opposition to their united power. The college of cardinals was often assembled, in order to prepare the sentence with due deliberation, and the ablest canonists were consulted how it might be expressed with unexceptionable formality. At last, on the 15th of June, 1520, the bull, so fatal to the Church of Rome, was issued. Forty-one propositions, extracted out of Luther's works, are therein condemned as heretical, scandalous, and offensive to pious ears; all persons are forbidden to read his writings, upon pain of excommunication; such as had any of them in their custody were commanded to commit them to the flames; he himself, if he did not, within sixty days, publicly recant his errors, and burn his books, is pronounced an obstinate heretic, is excommunicated, and delivered unto Satan for the destruction of his flesh; and all secular princes are required, under pain of incurring

the same censure, to seize his person, that he might be punished as his crimes deserved.[26]

The publication of this bull in Germany excited various passions in different places. Luther's adversaries exulted, as if his party and opinions had been crushed at once by such a decisive blow. His followers, whose reverence for the papal authority daily diminished, read Leo's anathemas with more indignation than terror. In some cities, the people violently obstructed the promulgation of the bull; in others, the persons who attempted to publish it were insulted; and the bull itself was torn in pieces, and trodden under foot.[27]

This sentence, which he had for some time expected, did not disconcert or intimidate Luther. After renewing his appeal to the general council, he published remarks upon the bull of excommunication; and being now persuaded that Leo had been guilty both of impiety and injustice in his proceedings against him, he boldly declared the pope to be that man of sin, or Antichrist, whose appearance is foretold in the New Testament; he declaimed against his tyranny and usurpations with greater violence than ever; he exhorted all Christian princes to shake off such an ignominious yoke, and boasted of his own happiness in being marked out as the object of ecclesiastical indignation, because he had ventured to assert the liberty of mankind. Nor did he confine his expressions of contempt for the papal power to words alone: Leo

[26] Palavic. 27. Luth. Oper. i. 423. [27] Seckend. p. 116.

having, in execution of the bull, appointed Luther's books to be burnt at Rome, he, by way of retaliation, assembled all the professors and students in the University of Wittemberg, and with great pomp, in presence of a vast multitude of spectators, cast the volumes of the canon law, together with the bull of excommunication, into the flames; and his example was imitated in several cities of Germany. The manner in which he justified this action was still more offensive than the action itself. Having collected from the canon law some of the most extravagant propositions with regard to the plenitude and omnipotence of the papal power, as well as the subordination of all secular jurisdiction to the authority of the holy see, he published these with a commentary, pointing out the impiety of such tenets, and their evident tendency to subvert all civil government.[28]

Such was the progress which Luther had made, and such the state of his party, when Charles arrived in Germany. No secular prince had hitherto embraced Luther's opinions; no change in the established forms of worship had been introduced; and no encroachments had been made upon the possessions or jurisdiction of the clergy; neither party had yet proceeded to action; and the controversy, though conducted with great heat and passion on both sides, was still carried on with its proper weapons, — with theses, disputations, and replies. A deep impression, however, was made

[28] Luth. Oper. ii. 316.

upon the minds of the people; their reverence for ancient institutions and doctrines was shaken; and the materials were already scattered, which kindled into the combustion that soon spread over all Germany. Students crowded from every province of the empire to Wittemberg; and under Luther himself, Melancthon, Carlostadius, and other masters then reckoned eminent, imbibed opinions, which, on their return, they propagated among their countrymen, who listened to them with that fond attention which truth, when accompanied with novelty, naturally commands.[29]

During the course of these transactions, the court of Rome, though under the direction of one of its ablest pontiffs, neither formed its schemes with that profound sagacity, nor executed them with that steady perseverance, which had long rendered it the most perfect model of political wisdom to the rest of Europe. When Luther began to declaim against indulgences, two different methods of treating him lay before the pope; by adopting one of which, the attempt, it is probable, might have been crushed, and by the other it might have been rendered innocent. If Luther's first departure from the doctrines of the Church had instantly drawn upon him the weight of its censures, the dread of these might have restrained the elector of Saxony from protecting him, might have deterred the people from listening to his discourses, or even might have overawed Luther him-

[29] Seckend. 59.

self; and his name, like that of many good men before his time, would now have been known to the world only for his honest but ill-timed effort to correct the corruptions of the Romish Church. On the other hand, if the pope had early testified some displeasure with the vices and excesses of the friars who had been employed in publishing indulgences; if he had forbidden the mentioning of controverted points in discourses addressed to the people; if he had enjoined the disputants on both sides to be silent; if he had been careful not to risk the credit of the Church by defining articles which had hitherto been left undetermined, — Luther would, probably, have stopped short at his first discoveries: he would not have been forced, in self-defence, to venture upon new ground, and the whole controversy might possibly have died away insensibly; or, being confined entirely to the schools, might have been carried on with as little detriment to the peace and unity of the Romish Church as that which the Franciscans maintained with the Dominicans concerning the immaculate conception, or that between the Jansenists and Jesuits concerning the operations of grace. But Leo, by fluctuating between these opposite systems, and by embracing them alternately, defeated the effects of both. By an improper exertion of authority, Luther was exasperated, but not restrained. By a mistaken exercise of lenity, time was given for his opinions to spread, but no progress was made towards reconciling him to the

Church; and even the sentence of excommunication, which at another juncture might have been decisive, was delayed so long that it became at last scarcely an object of terror.

Such a series of errors in the measures of a court seldom chargeable with mistaking its own true interest, is not more astonishing than the wisdom which appeared in Luther's conduct. Though a perfect stranger to the maxims of worldly wisdom, and incapable, from the impetuosity of his temper, of observing them, he was led naturally, by the method in which he made his discoveries, to carry on his operations in a manner which contributed more to their success, than if every step he took had been prescribed by the most artful policy. At the time when he set himself to oppose Tetzel, he was far from intending that reformation which he afterwards effected; and would have trembled with horror at the thoughts of what at last he gloried in accomplishing. The knowledge of truth was not poured into his mind all at once, by any special revelation; he acquired it by industry and meditation, and his progress, of consequence, was gradual. The doctrines of popery are so closely connected, that the exposing of one error conducted him naturally to the detection of others; and all the parts of that artificial fabric were so united together, that the pulling down of one loosened the foundation of the rest, and rendered it more easy to overturn them. In confuting the extravagant tenets concerning indulgences, he was obliged to inquire into

the true cause of our justification and acceptance with God. The knowledge of that discovered to him by degrees the inutility of pilgrimages and penances; the vanity of relying on the intercession of saints; the impiety of worshipping them; the abuses of auricular confession; and the imaginary existence of purgatory. The detection of so many errors led him, of course, to consider the character of the clergy who taught them; and their exorbitant wealth, the severe injunction of celibacy, together with the intolerable rigor of monastic vows, appeared to him the great sources of their corruption. From thence, it was but one step to call in question the divine original of the papal power, which authorized and supported such a system of errors. As the unavoidable result of the whole, he disclaimed the infallibility of the pope, the decisions of schoolmen, or any other human authority, and appealed to the word of God as the only standard of theological truth. To this gradual progress Luther owed his success. His hearers were not shocked at first by any proposition too repugnant to their ancient prejudices, or too remote from established opinions. They were conducted insensibly from one doctrine to another. Their faith and conviction were able to keep pace with his discoveries. To the same cause was owing the inattention, and even indifference, with which Leo viewed Luther's first proceedings. A direct or violent attack upon the authority of the Church would at once have

drawn upon Luther the whole weight of its vengeance: but as this was far from his thoughts, as he continued long to profess great respect for the pope, and made repeated offers of submission to his decisions, there seemed to be no reason for apprehending that he would prove the author of any desperate revolt; and he was suffered to proceed, step by step, in undermining the constitution of the Church, until the remedy applied at last came too late to produce any effect.

But whatever advantages Luther's cause derived, either from the mistakes of his adversaries, or from his own good conduct, the sudden progress and firm establishment of his doctrines must not be ascribed to these alone. The same corruptions in the Church of Rome which he condemned, had been attacked long before his time. The same opinions which he now propagated, had been published in different places, and were supported by the same arguments. Waldus in the twelfth century, Wickliff in the fourteenth, and Huss in the fifteenth, had inveighed against the errors of popery with great boldness, and confuted them with more ingenuity and learning than could have been expected in those illiterate ages in which they flourished. But all these premature attempts towards a reformation proved abortive. Such feeble lights, incapable of dispelling the darkness which then covered the Church, were soon extinguished; and though the doctrines of these pious men produced some effects, and left some traces in the countries

where they taught, they were neither extensive nor considerable. Many powerful causes contributed to facilitate Luther's progress, which either did not exist, or did not operate with full force, in their days; and at that critical and mature juncture when he appeared, circumstances of every kind concurred in rendering each step that he took successful.

The long and scandalous schism which divided the Church during the latter part of the fourteenth and the beginning of the fifteenth centuries, had a great effect in diminishing the veneration with which the world had been accustomed to view the papal dignity. Two or three contending pontiffs roaming about Europe at a time; fawning on the princes whom they wanted to gain; extorting large sums of money from the countries which acknowledged their authority; excommunicating their rivals, and cursing those who adhered to them, discredited their pretensions to infallibility, and exposed both their persons and their office to contempt. The laity, to whom all parties appealed, came to learn that some right of private judgment belonged to them, and acquired the exercise of it so far as to choose, among these infallible guides, whom they would please to follow. The proceedings of the councils of Constance and Basil spread this disrespect for the Romish see still wider, and, by their bold exertion of authority in deposing and electing popes, taught men that there was in the Church a jurisdiction superior even to the papal power, which they had long believed to be supreme.

The wound given on that occasion to the papal authority was scarcely healed up, when the pontificates of Alexander VI. and Julius II., both able princes, but detestable ecclesiastics, raised new scandal in Christendom. The profligate morals of the former in private life; the fraud, the injustice, and cruelty of his public administration, place him on a level with those tyrants whose deeds are the greatest reproach to human nature. The latter, though a stranger to the odious passions which prompted his predecessor to commit so many unnatural crimes, was under the dominion of a restless and ungovernable ambition, that scorned all considerations of gratitude, of decency, or of justice, when they obstructed the execution of his schemes. It was hardly possible to be firmly persuaded that the infallible knowledge of a religion, whose chief precepts are purity and humility, was deposited in the breasts of the profligate Alexander or the overbearing Julius. The opinion of those who exalted the authority of a council above that of the pope, spread wonderfully under their pontificates; and as the emperor and French kings, who were alternately engaged in hostilities with those active pontiffs, permitted and even encouraged their subjects to expose their vices with all the violence of invective, and all the petulance of ridicule, men's ears being accustomed to these, were not shocked with the bold or ludicrous discourses of Luther and his followers concerning the papal dignity.

Nor were such excesses confined to the head of

the Church alone. Many of the dignified clergy, secular as well as regular, being the younger sons of noble families, who had assumed the ecclesiastical character for no other reason but that they found in the Church stations of great dignity and affluence, were accustomed totally to neglect the duties of their office, and indulged themselves without reserve in all the vices to which great wealth and idleness naturally give birth. Though the inferior clergy were prevented by their poverty from imitating the expensive luxury of their superiors, yet gross ignorance and low debauchery rendered them as contemptible as the others were odious.[30] The severe and unnatural law of celibacy, to which both were equally subject, occasioned such irregularities, that in several parts of Europe the concubinage of priests was not only permitted, but enjoined. The employing of a remedy so contrary to the precepts of the Christian religion, is the strongest proof that the crimes it was intended to prevent were both numerous and flagrant. Long before the sixteenth century, many authors of great name and authority give such descriptions of the

[30] The corrupt state of the Church prior to the Reformation is acknowledged by an author, who was both abundantly able to judge concerning this matter and who was not over-forward to confess it. "For some years," says Bellarmine, "before the Lutheran and Calvinistic heresies were published, there was not (as contemporary authors testify) any severity in ecclesiastical judicatories, any discipline with regard to morals, any knowledge of sacred literature, any reverence for divine things; there was not almost any religion remaining." Bellarminus, Concio xxviii. Oper. tom. vi. col. 296, edit. Colon. 1617, apud Gerdesii Hist. Evan. Renovati, vol. i. p. 25.

dissolute morals of the clergy, as seems almost incredible in the present age.[31] The voluptuous lives of ecclesiastics occasioned great scandal, not only because their manners were inconsistent with their sacred character, but the laity, being accustomed to see several of them raised from the lowest stations to the greatest affluence, did not show the same indulgence to their excesses, as to those of persons possessed of hereditary wealth or grandeur; and viewing their condition with more envy, they censured their crimes with greater severity. Nothing, therefore, could be more acceptable to Luther's

31 Centum Gravamina Nation. German. in Fasciculo Rer. expetend. et fugiendarum, per Ortuinum Gratium, vol. i. 361. See innumerable passages to the same purpose in the Appendix, or second volume, published by Edw. Brown. See also Herm. Von der Hardt, Hist. Lit. Reform. pars iii. and the vast collections of Walchius in his four volumes of Monumenta Medii Ævi. Gotting. 1757.

The authors I have quoted enumerate the vices of the clergy. When they ventured upon actions manifestly criminal, we may conclude that they would be less scrupulous with respect to the decorum of behavior Accordingly, their neglect of the decent conduct suitable to their profession, seems to have given great offence. In order to illustrate this, I shall transcribe one passage, because it is not taken from any author whose professed purpose it was to describe the improper conduct of the clergy, and who, from prejudice or artifice, may be supposed to aggravate the charge against them. The Emperor Charles IV., in a letter to the archbishop of Mentz, A. D. 1359, exhorting him to reform the disorders of the clergy, thus expresses himself: "De Christi patrimonio, ludos, hastiludia et torneamenta exercent; habitum militarem cum prætextis aureis et argenteis gestant, et calceos militares; comam et barbam nutriunt, et nihil quod ad vitam et ordinem ecclesiasticum spectat, ostendunt. Militaribus se duntaxat et secularibus actibus, vita et moribus, in suæ salutis dispendium, et generale populi scandalum, immiscent." Codex Diplomaticus Anecdotorum, per Val. Ferd. Gudenum, 4to, vol. iii. p. 438.

hearers than the violence with which he exclaimed against the immoralities of churchmen; and every person in his audience could, from his own obser vation, confirm the truth of his invectives.

The scandal of these crimes was greatly increased by the facility with which such as committed them obtained pardon. In all the European kingdoms, the importance of the civil magistrate, under forms of government extremely irregular and turbulent, made it necessary to relax the rigor of justice; and, upon payment of a certain fine or composition prescribed by law, judges were accustomed to remit further punishment, even of the most atrocious crimes. The court of Rome, always attentive to the means of augmenting its revenues, imitated this practice; and, by a preposterous accommodation of it to religious concerns, granted its pardons to such transgressors as gave a sum of money in order to purchase them. As the idea of a composition for crimes was then familiar, this strange traffic was so far from shocking mankind, that it soon became general; and, in order to prevent any imposition in carrying it on, the officers of the Roman chancery published a book containing the precise sum to be exacted for the pardon of every particular sin. A deacon, guilty of murder, was absolved for twenty crowns. A bishop, or abbot, might assassinate for three hundred livres. Any ecclesiastic might violate his vows of chastity, even with the most aggravating circumstances, for the third part of that sum. Even

such shocking crimes as occur seldom in human life, and perhaps exist only in the impure imagination of a casuist, were taxed at a very moderate rate. When a more regular and perfect mode of dispensing justice came to be introduced into civil courts, the practice of paying a composition for crimes went gradually into disuse; and, mankind having acquired more accurate notions concerning religion and morality, the conditions on which the courts of Rome bestowed its pardons appeared impious, and were considered as one great source of ecclesiastical corruption.[32]

This degeneracy of manners among the clergy might have been tolerated, perhaps, with greater indulgence, if their exorbitant riches and power had not enabled them, at the same time, to encroach on the rights of every other order of men. It is the genius of superstition, fond of whatever is pompous or grand, to set no bounds to its liberality towards persons whom it esteems sacred; and to think its expressions of regard defective, unless it hath raised them to the height of wealth and authority. Hence flowed the extensive revenues and jurisdiction possessed by the Church in every country in Europe; and which were become intolerable to the laity, from whose undiscerning bounty they were at first derived.

The burden, however, of ecclesiastical oppression

[32] Fasicul. Rer. expet. et fug. i. 355. J. G. Schelhornii Amœnit. Literar. Francof. 1725, vol. ii. 369. Diction. de Bayle, Artic. Banck et Tuppius. Texa Cancellar. Romanæ, edit. Francof. 1651, passim.

had fallen with such peculiar weight on the Germans, as rendered them, though naturally exempt from levity, and tenacious of their ancient customs, more inclinable than any people in Europe to listen to those who called on them to assert their liberty. During the long contests between the popes and emperors concerning the right of investiture, and the wars which these occasioned, most of the considerable German ecclesiastics joined the papal faction; and while engaged in rebellion against the head of the empire, they seized the imperial domains and revenues, and usurped the imperial jurisdiction within their own dioceses. Upon the re-establishment of tranquillity, they still retained these usurpations; as if, by the length of an unjust possession, they had acquired a legal right to them. The emperors, too feeble to wrest them out of their hands, were obliged to grant the clergy fiefs of those ample territories; and they enjoyed all the immunities, as well as honors, which belonged to feudal barons. By means of these, many bishops and abbots in Germany were not only ecclesiastics, but princes; and their character and manners partook more of the license too frequent among the latter, than of the sanctity which became the former.[33]

The unsettled state of government in Germany, and the frequent wars to which that country was exposed, contributed in another manner towards aggrandizing ecclesiastics. The only property,

[33] F. Paul, History of Ecclesiast. Benefices, p. 107.

during those times of anarchy, which enjoyed security from the oppression of the great, or the ravages of war, was that which belonged to the Church. This was owing, not only to the great reverence for the sacred character prevalent in those ages, but to a superstitious dread of the sentence of excommunication, which the clergy were ready to denounce against all who invaded their possessions. Many, observing this, made a surrender of their lands to ecclesiastics; and, consenting to hold them in fee of the Church, obtained, as its vassals, a degree of safety, which without this device they were unable to procure. By such an increase of the number of their vassals, the power of ecclesiastics received a real and permanent augmentation; and, as lands held in fee by the limited tenures common in those ages often returned to the persons on whom the fief depended, considerable additions were made in this way to the property of the clergy.[34]

The solicitude of the clergy in providing for the safety of their own persons, was still greater than that which they displayed in securing their possessions; and their efforts to attain it were still more successful. As they were consecrated to the priestly office with much outward solemnity, were distinguished from the rest of mankind by a peculiar garb and manner of life, and arrogated to their order many privileges which do not belong to

[34] F. Paul, Hist. of Eccles. Benef. p. 66. Boulainvilliers, Etat de France, tom. i. 169, Lond. 1737.

other Christians, they naturally became the objects of excessive veneration. As a superstitious spirit spread, they were regarded as beings of a superior species to the profane laity, whom it would be impious to try by the same laws, or to subject to the same punishments. This exemption from civil jurisdiction, granted at first to ecclesiastics as a mark of respect, they soon claimed as a point of right. This valuable immunity of the priesthood is asserted, not only in the decrees of popes and councils, but was confirmed in the most ample form by many of the greatest emperors.[35] As long as the clerical character remained, the person of an ecclesiastic was in some degree sacred; and unless he were degraded from his office, the unhallowed hand of the civil judge durst not touch him. But as the power of degradation was lodged in the spiritual courts, the difficulty and expense of obtaining such a sentence too often secured absolute impunity to offenders. Many assumed the clerical character for no other reason than that it might screen them from the punishment which their actions deserved.[36] The German nobles complained loudly that these anointed malefactors, as they called them,[37] seldom suffered capitally, even for the most atrocious crimes; and their independence of the civil magistrate is often mentioned in the remonstrances of the diets, as a privilege equally pernicious to society and to the morals of the clergy.

35 Goldasti Constitut. Imperial. Francof. 1673, vol. ii. 92, 107.

36 Rymer's Fœdera, vol. xiii. 532.

37 Centum Gravam. § 31.

While the clergy asserted the privileges of their own order with so much zeal, they made continual encroachments upon those of the laity. All causes relative to matrimony, to testaments, to usury, to legitimacy of birth, as well as those which concerned ecclesiastical revenues, were thought to be so connected with religion, that they could be tried only in the spiritual courts. Not satisfied with this ample jurisdiction, which extended to one half of the subjects that gave rise to litigation among men, the clergy, with wonderful industry, and by a thousand inventions, endeavored to draw all other causes into their own courts.[38] As they had engrossed almost the whole learning known in the Dark Ages, the spiritual judges were commonly so far superior in knowledge and abilities to those employed in the secular courts, that the people at first favored any stretch that was made to bring their affairs under the cognizance of a judicature, on the decisions of which they could rely with more perfect confidence than on those of the civil courts. Thus the interest of the Church, and the inclination of the people, concurring to elude the jurisdiction of the lay-magistrate, soon reduced it almost to nothing.[39] By means of this, vast power accrued to ecclesiastics, and no inconsiderable addition was made to their revenue by the sums paid in those ages to the persons who administered justice.

The penalty by which the spiritual courts en-

[38] Giannone, Hist. of Naples, book xix. § 3.

[39] Centum Gravam. § 9, 56, 64.

forced their sentences added great weight and terror to their jurisdiction. The censure of excommunication was instituted originally for preserving the purity of the Church; that obstinate offenders, whose impious tenets or profane lives were a reproach to Christianity, might be cut off from the society of the faithful: this, ecclesiastics did not scruple to convert into an engine for promoting their own power, and they inflicted it on the most frivolous occasions. Whoever despised any of their decisions, even concerning civil matters, immediately incurred this dreadful censure, which not only excluded them from all the privileges of a Christian, but deprived them of their rights as men and citizens;[40] and the dread of this rendered even the most fierce and turbulent spirits obsequious to the authority of the Church.

Nor did the clergy neglect the proper methods of preserving the wealth and power which they had acquired with such industry and address. The possessions of the Church, being consecrated to God, were declared to be unalienable; so that the funds of a society which was daily gaining and could never lose, grew to be immense. In Germany, it was computed that the ecclesiastics had got into their hands more than one half of the national property.[41] In other countries the proportion varied; but the share belonging to the Church was everywhere prodigious. These vast possessions were not subject to the burdens imposed on the

[40] Centum Gravam. § 34. [41] Ibid. § 28.

lands of the laity. The German clergy were exempted by law from all taxes;[42] and if, on an extraordinary emergence, ecclesiastics were pleased to grant some aid towards supplying the public exigencies, this was considered as a free gift flowing from their own generosity, which the civil magistrate had no title to demand, far less to exact. In consequence of this strange solecism in government, the laity in Germany had the mortification to find themselves loaded with excessive impositions, because such as possessed the greatest property were freed from any obligation to support or defend the state.

Grievous, however, as the exorbitant wealth and numerous privileges of the clerical order were to the other members of the Germanic body, they would have reckoned it some mitigation of the evil, if these had been possessed only by ecclesiastics residing among themselves, who would have been less apt to make an improper use of their riches, or to exercise their rights with unbecoming rigor. But the bishops of Rome having early put in a claim, the boldest that ever human ambition suggested, of being supreme and infallible heads of the Christian Church, they, by their profound policy and unwearied perseverance, — by their address in availing themselves of every circumstance which occurred, — by taking advantage of the superstition of some princes, of the necessities of others, and of

[42] Id. ibid. Goldasti Const. Imper. ii. 79, 108. Pfeffel, Hist. du Droit Publ. 350, 374.

the credulity of the people, — at length established their pretensions, in opposition both to the interest and common sense of mankind. Germany was the country which these ecclesiastical sovereigns governed with most absolute authority. They excommunicated and deposed some of its most illustrious emperors; and excited their subjects, their ministers, and even their children, to take arms against them. Amidst these contests, the popes continually extended their own immunities, spoiling the secular princes gradually of their most valuable prerogatives; and the German Church felt all the rigor of that oppression which flows from subjection to foreign dominion, and foreign exactions.

The right of conferring benefices, which the popes usurped during that period of confusion, was an acquisition of great importance, and exalted the ecclesiastical power upon the ruins of the temporal. The emperors and other princes of Germany had long been in possession of this right, which served to increase both their authority and their revenue; but by wresting it out of their hands, the popes were enabled to fill the empire with their own creatures; they accustomed a great body of every prince's subjects to depend, not upon him, but upon the Roman see; they bestowed upon strangers the richest benefices in every country, and drained their wealth to supply the luxury of a foreign court. Even the patience of the most superstitious ages could no longer bear such oppression; and, so loud and frequent were the complaints and murmurs of

the Germans, that the popes, afraid of irritating them too far, consented, contrary to their usual practice, to abate somewhat of their pretensions, and to rest satisfied with the right of nomination to such benefices as happened to fall vacant during six months in the year, leaving the disposal of the remainder to the princes and other legal patrons.[43]

But the court of Rome easily found expedients for eluding an agreement which put such restraints on its power. The practice of reserving certain benefices in every country to the pope's immediate nomination, which had been long known, and often complained of, was extended far beyond its ancient bounds. All the benefices possessed by cardinals, or any of the numerous officers in the Roman court; those held by persons who happened to die at Rome, or within forty miles of that city, on their journey to or from it; such as became vacant by translation, with many others, were included in the number of *reserved* benefices. Julius II. and Leo X., stretching the matter to the utmost, often collated to benefices where the right of reservation had not been declared, on pretence of having men tally reserved this privilege to themselves. The right of reservation, however, even with this extension, had certain limits, as it could be exercised only where the benefice was actually vacant; and therefore, in order to render the exertion of papal power unbounded, *expectative graces*, or mandates nominating a person to succeed to a benefice upon the first

[43] F. Paul, Hist. of Eccles. Benef. 204. Gold. Constit. Imper. i. 408.

vacancy that should happen, were brought into use. By means of these, Germany was filled with persons who were servilely dependent on the court of Rome, from which they had received such reversionary grants; princes were defrauded, in a great degree, of their prerogatives; the rights of lay-patrons were preoccupied, and rendered almost entirely vain.[44]

The manner in which these extraordinary powers were exercised rendered them still more odious and intolerable. The avarice and extortion of the court of Rome were become excessive, almost to a proverb. The practice of selling benefices was so notorious, that no pains were taken to conceal or to disguise it. Companies of merchants openly purchased the benefices of different districts in Germany from the pope's ministers, and retailed them at an advanced price.[45] Pious men beheld with deep regret these simoniacal transactions, so unworthy the ministers of a Christian Church; while politicians complained of the loss sustained by the exportation of so much wealth in that irreligious traffic.

The sums, indeed, which the court of Rome drew by its stated and legal impositions from all the countries acknowledging its authority, were so considerable, that it is not strange that princes, as well as their subjects, murmured at the smallest addi-

[44] Centum Gravam. § 21. Fascic. Rer. expet. &c. 334. Gold. Const. Imper. i. 391, 404, 405. F. Paul, Hist. of Eccl. Benef. 167, 199.

[45] Fasic. Rer. expet. i. 359.

tion made to them by unnecessary or illicit means. Every ecclesiastical person, upon his admission to his benefice, paid *annats*, or one year's produce of his living, to the pope; and as that tax was exacted with great rigor, its amount was very great. To this must be added the frequent demands made by the popes of free gifts from the clergy, together with the extraordinary levies of tenths upon ecclesiastical benefices, on pretence of expeditions against the Turks, seldom intended or carried into execution;. and, from the whole, the vast proportion of the revenues of the Church which flowed continually to Rome may be estimated.

Such were the dissolute manners, the exorbitant wealth, the enormous power and privileges, of the clergy before the Reformation; such the oppressive rigor of that dominion which the popes had established over the Christian world; and such the sentiments concerning them that prevailed in Germany at the beginning of the sixteenth century. Nor has this sketch been copied from the controversial writers of that age, who, in the heat of disputation, may be suspected of having exaggerated the errors, or of having misrepresented the conduct, of that Church which they labored to overturn: it is formed upon more authentic evidence, — upon the memorials and remonstrances of the imperial diets, enumerating the grievances under which the empire groaned, in order to obtain the redress of them. Dissatisfaction must have arisen to a great height among the people, when these

grave assemblies expressed themselves with that degree of acrimony which abounds in their remonstrances; and if they demanded the abolition of these enormities with so much vehemence, the people, we may be assured, uttered their sentiments and desires in bolder and more virulent language.

To men thus prepared for shaking off the yoke, Luther addressed himself with certainty of success. As they had long felt its weight, and had borne it with impatience, they listened with joy to the first offer of procuring them deliverance. Hence proceeded the fond and eager reception that his doctrines met with, and the rapidity with which they spread over all the provinces of Germany. Even the impetuosity and fierceness of Luther's spirit, his confidence in asserting his own opinions, and the arrogance as well as contempt wherewith he treated all them who differed from him, which, in ages of greater moderation and refinement, have been reckoned defects in the character of that Reformer, did not appear excessive to his contemporaries, whose minds were strongly agitated by those interesting controversies which he carried on, and who had themselves endured the rigor of papal tyranny, and seen the corruptions in the Church against which he exclaimed.

Nor were they offended at that gross scurrility with which his polemical writings are filled, or at the low buffoonery which he sometimes introduces into his gravest discourses. No dispute was man-

aged in those rude times without a large portion of the former; and the latter was common, even on the most solemn occasions, and in treating the most sacred subjects. So far were either of these from doing hurt to his cause, that invective and ridicule had some effect, as well as more laudable arguments, in exposing the errors of popery, and in determining mankind to abandon them.

Besides all these causes of Luther's rapid progress, arising from the nature of his enterprise, and the juncture at which he undertook it, he reaped advantage from some foreign and adventitious circumstances, the beneficial influence of which none of his forerunners in the same course enjoyed Among these may be reckoned the invention of the art of printing, about half a century before his time. By this fortunate discovery, the facility of acquiring and of propagating knowledge was wonderfully increased; and Luther's books, which must otherwise have made their way slowly and with uncertainty into distant countries, spread out at once all over Europe. Nor were they read only by the rich and the learned, who alone had access to books before that invention: they got into the hands of the people, who, upon this appeal to them as judges, ventured to examine and to reject many doctrines which they had formerly been required to believe, without being taught to understand them.

The revival of learning at the same period was a circumstance extremely friendly to the Reforma-

tion. The study of the ancient Greek and Roman authors, by enlightening the human mind with liberal and sound knowledge, roused it from that profound lethargy in which it had been sunk during several centuries. Mankind seem, at that period, to have recovered the powers of inquiring and of thinking for themselves, faculties of which they had long lost the use; and fond of the acquisition, they exercised them with great boldness upon all subjects. They were not now afraid of entering an uncommon path, or of embracing a new opinion. Novelty appears rather to have been a recommendation of a doctrine; and, instead of being startled when the daring hand of Luther drew aside or tore the veil which covered and established errors, the genius of the age applauded and aided the attempt. Luther, though a stranger to elegance in taste or composition, zealously promoted the cultivation of ancient literature; and sensible of its being necessary to the right understanding of the Scriptures, he himself had acquired considerable knowledge both in the Hebrew and Greek tongues. Melancthon, and some other of his disciples, were eminent proficients in the polite arts; and, as the same ignorant monks who opposed the introduction of learning into Germany set themselves with equal fierceness against Luther's opinions, and declared the good reception of the latter to be the effect of the progress which the former had made, the cause of learning and of the Reformation came to be considered as closely

connected with each other, and, in every country, had the same friends and the same enemies. This enabled the Reformers to carry on the contest at first with great superiority. Erudition, industry, accuracy of sentiment, purity of composition, even wit and raillery, were almost wholly on their side; and triumphed with ease over illiterate monks, whose rude arguments, expressed in a perplexed and barbarous style, were found insufficient for the defence of a system, the errors of which all the art and ingenuity of its later and more learned advocates have not been able to palliate.

That bold spirit of inquiry, which the revival of learning excited in Europe, was so favorable to the Reformation, that Luther was aided in his progress, and mankind were prepared to embrace his doctrines, by persons who did not wish success to his undertaking. The greater part of the ingenious men who applied to the study of ancient literature towards the close of the fifteenth century and the beginning of the sixteenth, though they had no intention, and perhaps no wish, to overturn the established system of religion, had discovered the absurdity of many tenets and practices authorized by the Church, and perceived the futility of those arguments by which illiterate monks endeavored to defend them. Their contempt of these advocates for the received errors led them frequently to expose the opinions which they supported, and to ridicule their ignorance with great freedom and severity. By this, men were prepared for the

more serious attacks made upon them by Luther; and their reverence both for the doctrines and persons against whom he inveighed was considerably abated. This was particularly the case in Germany. When the first attempts were made to revive a taste for ancient learning in that country, the ecclesiastics there, who were still more ignorant than their brethren on the other side of the Alps, set themselves to oppose its progress with more active zeal; and the patrons of the new studies, in return, attacked them with greater violence. In the writings of Reuchlin, Hutten, and the other revivers of learning in Germany, the corruptions of the Church of Rome are censured with an acrimony of style little inferior to that of Luther himself.[46]

From the same cause proceeded the frequent strictures of Erasmus upon the errors of the Church, as well as upon the ignorance and vices of the clergy. His reputation and authority were so high in Europe at the beginning of the sixteenth century, and his works were read with such universal admiration, that the effect of these deserves to be mentioned as one of the circumstances which contributed considerably towards Luther's success. Erasmus, having been destined for the Church, and trained up in the knowledge of ecclesiastical literature, applied himself more to theological inquiries than any of the revivers of learning in that age. His

[46] Gerdesius, Hist. Evang. Renov. vol. i. pp. 141, 157. Seckend. lib. i. p. 103. Von der Hardt, Hist. Literar. Reform. pars ii.

acute judgment and extensive erudition enabled him to discover many errors both in the doctrine and worship of the Romish Church. Some of these he confuted with great solidity of reasoning and force of eloquence. Others he treated as objects of ridicule, and turned against them that irresistible torrent of popular and satirical wit of which he had the command. There was hardly any opinion or practice of the Romish Church which Luther endeavored to reform, but what had been previously animadverted upon by Erasmus, and had afforded him subject either of censure or of raillery. Accordingly, when Luther first began his attack upon the Church, Erasmus seemed to applaud his conduct; he courted the friendship of several of his disciples and patrons, and condemned the behavior and spirit of his adversaries.[47] He concurred openly with him in inveighing against the school divines, as the teachers of a system equally unedifying and obscure. He joined him in endeavoring to turn the attention of men to the study of the Holy Scriptures, as the only standard of religious truth.[48]

Various circumstances, however, prevented Erasmus from holding the same course with Luther. The natural timidity of his temper; his want of that strength of mind which alone can prompt a man to assume the character of a reformer;[49] his

[47] Seckend. lib. i. pp. 40, 96.

[48] Von der Hardt, Histor. Literar. Reform. pars i. Gerdes. Hist. Evang. Renov. i. 147.

[49] Erasmus himself is candid enough to acknowledge this. "Luther,"

excessive deference for persons in high stations; his dread of losing the pensions and other emoluments which their liberality had conferred upon him; his extreme love of peace, and hopes of reforming abuses gradually, and by gentle methods, — all concurred in determining him not only to repress and to moderate the zeal with which he had once been animated against the errors of the Church,[50] but to assume the character of a mediator between Luther and his opponents. But though Erasmus soon began to censure Luther as too daring and impetuous, and was at last prevailed upon to write against him, he must, nevertheless, be considered as his forerunner and auxiliary in this war upon the Church. He first scattered the seeds which Luther cherished and brought to maturity. His raillery and oblique censures prepared the way for Luther's invectives and more direct attacks. In this light Erasmus appeared to the zealous defenders of the Romish Church in his own times.[51] In this light he must be considered by every person conversant in the history of that period.

In this long enumeration of the circumstances which combined in favoring the progress of Lu-

says he, "has given us many a wholesome doctrine, and many a good counsel. I wish he had not defeated the effect of them by intolerable faults. But if he had written everything in the most unexceptionable manner, I had no inclination to die for the sake of truth. Every man hath not the courage requisite to make a martyr; and I am afraid that, if I were put to the trial, I should imitate St. Peter." — Epist. Erasmi, in Jortin's Life of Erasmus, vol. i. p. 273.

50 Jortin's Life of Erasmus, vol. i. p. 258.

51 Von der Hardt, Hist. Literar. Reform. pars i. p. 2.

ther's opinions, or in weakening the resistance of his adversaries, I have avoided entering into any discussion of the theological doctrines of popery, and have not attempted to show how repugnant they are to the spirit of Christianity, and how destitute of any foundation in reason, in the word of God, or in the practice of the primitive Church; leaving those topics entirely to ecclesiastical historians, to whose province they peculiarly belong. But when we add the effect of these religious considerations to the influenee of political causes, it is obvious that the united operation of both on the human mind must have been sudden and irresistible. Though, to Luther's contemporaries, who were too near, perhaps, to the scene, or too deeply interested in it, to trace causes with accuracy, or to examine them with coolness, the rapidity with which his opinions spread appeared to be so unaccountable, that some of them imputed it to a certain uncommon and malignant position of the stars, which scattered the spirit of giddiness and innovation over the world;[52] it is evident, that the success of the Reformation was the natural effect of many powerful causes prepared by peculiar providence, and happily conspiring to that end. This attempt to investigate these causes, and to throw light on an event so singular and important, will not, perhaps, be deemed an unnecessary digression. — I return from it to the course of the history.

[52] Jovii Historia, Lut. 1553, fol. p. 134.

The diet of Worms conducted its deliberations with that slow formality peculiar to such assemblies. Much time was spent in establishing some regulations with regard to the internal police of the empire. The jurisdiction of the imperial chamber was confirmed, and the forms of its proceeding rendered more fixed and regular. A council of regency was appointed to assist Ferdinand in the government of the empire during any occasional absence of the emperor; which, from the extent of the emperor's dominions, as well as the multiplicity of his affairs, was an event that might be frequently expected.[53] The state of religion was then taken into consideration. There were not wanting some plausible reasons which might have induced Charles to have declared himself the protector of Luther's cause, or at least to have connived at its progress. If he had possessed no other dominions but those which belonged to him in Germany, and no other crown besides the imperial, he might have been disposed, perhaps, to favor a man who asserted so boldly the privileges and immunities for which the empire had struggled so long with the popes. But the vast and dangerous schemes which Francis I. was forming against Charles, made it necessary for him to regulate his conduct by views more extensive than those which would have suited a German prince; and it being of the utmost importance to secure

[53] Pont. Heuter. Rer. Austr. lib. viii. c. 11, p. 195. Pfeffel, Abrégé Chronol. p. 598.

the pope s friendship, this determined him to treat Luther with great severity, as the most effectual method of soothing Leo into a concurrence with his measures. His eagerness to accomplish this rendered him not unwilling to gratify the papal legates in Germany, who insisted that, without any delay or formal deliberation, the diet ought to condemn a man whom the pope had already excommunicated as an incorrigible heretic. Such an abrupt manner of proceeding, however, being deemed unprecedented and unjust by the members of the diet, they made a point of Luther's appearing in person, and declaring whether he adhered or not to those opinions which had drawn upon him the censures of the Church.[54] Not only the emperor, but all the princes through whose territories he had to pass, granted him a safe-conduct; and Charles wrote to him at the same time, requiring his immediate attendance on the diet, and renewing his promises of protection from any injury or violence.[55] Luther did not hesitate one moment about yielding obedience; and set out for Worms, attended by the herald who had brought the emperor's letter and safe-conduct. While on his journey, many of his friends, whom the fate of Huss under similar circumstances, and notwithstanding the same security of an imperial safe-conduct, filled with solicitude, advised and entreated him not to rush wantonly into the midst of danger. But Luther, superior to such terrors,

[54] P. Mart. Ep. 722. [55] Luth. Oper. ii. 411.

silenced them with this reply: "I am lawfully called," said he, "to appear in that city; and thither will I go in the name of the Lord, though as many devils as there are tiles on the houses were there combined against me."[56]

The reception which he met with at Worms was such as he might have reckoned a full reward of all his labors, if vanity and the love of applause had been the principles by which he was influenced. Greater crowds assembled to behold him than had appeared at the emperor's public entry; his apartments were daily filled with princes and personages of the highest rank,[57] and he was treated with all the respect paid to those who possess the power of directing the understanding and sentiments of other men; a homage, more sincere, as well as more flattering, than any which preeminence in birth or condition can command. At his appearance before the diet, he behaved with great decency, and with equal firmness. He readily acknowledged an excess of vehemence and acrimony in his controversial writings; but refused to retract his opinions, unless he were convinced of their falsehood, or to consent to their being tried by any other rule than the word of God. When neither threats nor entreaties could prevail on him to depart from this resolution, some of the ecclesiastics proposed to imitate the example of the council of Constance, and, by punishing the author of this pestilent heresy, who was now in their

[56] Luth. Oper. ii. 412. [57] Seckend. 156. Luth. Oper. ii. 414.

power, to deliver the Church at once from such an evil. But the members of the diet refusing to expose the German integrity to fresh reproach by a second violation of public faith, and Charles being no less unwilling to bring a stain upon the beginning of his administration by such an ignominious action, Luther was permitted to depart in safety.[58] A few days after he left the city, a severe edict was published, in the emperor's name and by authority of the diet, depriving him, as an obstinate and excommunicated criminal, of all the privileges which he enjoyed as a subject of the empire, forbidding any prince to harbor or protect him, and requiring all to concur in seizing his person as soon as the term specified in his safe-conduct was expired.[59]

But this rigorous decree had no considerable effect; the execution of it being prevented, partly by the multiplicity of occupations which the commotions in Spain, together with the wars in Italy and the Low Countries, created to the emperor; and partly by a prudent precaution employed by the elector of Saxony, Luther's faithful and discerning patron. As Luther, on his return from Worms, was passing near Altenstein in Thuringia, a number of horsemen in masks rushed suddenly out of a wood, where the elector had appointed them to lie in wait for him, and, surrounding his company, carried him, after dismissing all his at-

[58] F. Paul, Hist. of Counc. p. 13. Seckend. 160.

[59] Gold. Const. Imperial. ii. 401.

tendants, to Wartburg, a strong castle not far distant. There the elector ordered him to be supplied with everything necessary or agreeable; but the place of his retreat was carefully concealed, until the fury of the present storm against him began to abate, upon a change in the political situation of Europe. In this solitude, where he remained nine months, and which he frequently called his Patmos, after the name of that island to which the Apostle John was banished, he exerted his usual vigor and industry in defence of his doctrines, or in confutation of his adversaries; publishing several treatises, which revived the spirit of his followers, astonished to a great degree, and disheartened, at the sudden disappearance of their leader.

During his confinement his opinions continued to gain ground, acquiring the ascendant in almost every city in Saxony. At this time, the Augustinians of Wittemberg, with the approbation of the university, and the connivance of the elector, ventured upon the first step towards an alteration in the established forms of public worship, by abolishing the celebration of private masses, and by giving the cup as well as the bread to the laity in administering the sacrament of the Lord's supper.

Whatever consolation the courage and success of his disciples, or the progress of his doctrines in his own country, afforded Luther in his retreat, he there received information of two events which considerably damped his joy, as they seemed to lay insuperable obstacles in the way of propagating his princi-

ples in the two most powerful kingdoms of Europe. One was, a solemn decree, condemning his opinions, published by the University of Paris; the most ancient, and at that time the most respectable, of the learned societies in Europe. The other was the answer written to his book concerning the Babylonish captivity by Henry VIII. of England. That monarch, having been educated under the eye of a suspicious father, who, in order to prevent his attending to business, kept him occupied in the study of literature, still retained a greater love of learning, and stronger habits of application to it, than are common among princes of so active a disposition and such violent passions. Being ambitious of acquiring glory of every kind, as well as zealously attached to the Romish Church, and highly exasperated against Luther, who had treated Thomas Aquinas, his favorite author, with great contempt, Henry did not think it enough to exert his royal authority in opposing the opinions of the Reformer, but resolved likewise to combat them with scholastic weapons. With this view he published his treatise on the seven sacraments; which, though forgotten at present, as books of controversy always are when the occasion that produced them is past, is not destitute of polemical ingenuity and acuteness, and was represented by the flattery of his courtiers to be a work of such wonderful science and learning, as exalted him no less above other authors in merit than he was distinguished among them by his rank. The pope, to whom it was pre

sented with the greatest formality in full consistory, spoke of it in such terms, as if it had been dictated by immediate inspiration; and, as a testimony of the gratitude of the Church for his extraordinary zeal, conferred on him the title of *Defender of the Faith*, an appellation which Henry soon forfeited in the opinion of those from whom he derived it, and which is still retained by his successors, though the avowed enemy of those opinions by contending for which he merited that honorable distinction. Luther, who was not overawed, either by the authority of the university or the dignity of the monarch, soon published his animadversions on both, in a style no less vehement and severe than he would have used in confuting his meanest antagonist. This indecent boldness, instead of shocking his contemporaries, was considered by them as a new proof of his undaunted spirit. A controversy managed by disputants so illustrious drew universal attention; and such was the contagion of the spirit of innovation diffused through Europe in that age, and so powerful the evidence which accompanied the doctrines of the Reformers on their first publication, that, in spite both of the civil and ecclesiastical powers combined against them, they daily gained converts both in France and in England.

How desirous soever the emperor might be to put a stop to Luther's progress, he was often obliged, during the diet at Worms, to turn his thoughts to matters still more interesting, and

which demanded more immediate attention. A war was ready to break out between him and the French king in Navarre, in the Low Countries, and in Italy; and it required either great address to avert the danger, or timely and wise precautions to resist it. Every circumstance, at that juncture, inclined Charles to prefer the former measure. Spain was torn with intestine commotions. In Italy, he had not hitherto secured the assistance of any one ally. In the Low Countries, his subjects trembled at the thoughts of a rupture with France, the fatal effects of which on their commerce they had often experienced. From these considerations, as well as from the solicitude of Chièvres, during his whole administration, to maintain peace between the two monarchs, proceeded the emperor's backwardness to commence hostilities. But Francis and his ministers did not breathe the same pacific spirit. He easily foresaw that concord could not long subsist, where interest, emulation, and ambition conspired to dissolve it; and he possessed several advantages which flattered him with the hopes of surprising his rival, and of overpowering him, before he could put himself in a posture of defence. The French king's dominions, from their compact situation, from their subjection to the royal authority, from the genius of the people, fond of war, and attached to their sovereign by every tie of duty and affection, were more capable of a great or sudden effort, than the larger but disunited territories of the emperor, in one part of which the people were in arms against

his ministers, and in all his prerogative was more limited than that of his rival.

The only princes in whose power it was to have kept down, or to have extinguished, this flame on its first appearance, either neglected to exert themselves, or were active in kindling and spreading it. Henry VIII., though he affected to assume the name of mediator, and both parties made frequent appeals to him, had laid aside the impartiality which suited that character. Wolsey, by his artifices, had estranged himself so entirely from the French king, that he secretly fomented the discord which he ought to have composed, and waited only for some decent pretext to join his arms to those of the emperor.[60]

Leo's endeavors to excite discord between the emperor and Francis were more avowed, and had greater influence. Not only his duty, as the common father of Christendom, but his interest as an Italian potentate, called upon the pope to act as the guardian of the public tranquillity, and to avoid any measure that might overturn the system, which, after much bloodshed and many negotiations, was now established in Italy. Accordingly Leo, who instantly discerned the propriety of this conduct, had formed a scheme, upon Charles's promotion to the imperial dignity, of rendering himself the umpire between the rivals, by soothing them alternately, while he entered into no close confederacy with either; and a pontiff less ambitious and enterprising

[60] Herbert. Fiddes's Life of Wolsey, 258.

might have saved Europe from many calamities by adhering to this plan. But this high-spirited prelate, who was still in the prime of life, longed passionately to distinguish his pontificate by some splendid action. He was impatient to wash away the infamy of having lost Parma and Placentia; the acquisition of which reflected so much lustre on the administration of his predecessor, Julius. He beheld, with the indignation natural to Italians in that age, the dominion which the Transalpine, or as they, in imitation of the Roman arrogance, denominated them, the barbarous nations, had attained in Italy. He flattered himself that, after assisting the one monarch to strip the other of his possessions in that country, he might find means of driving out the victor in his turn, and acquire the glory of restoring Italy to the liberty and happiness which it had enjoyed before the invasion of Charles VIII., when every state was governed by its native princes, or its own laws, and unacquainted with a foreign yoke. Extravagant and chimerical as this project may seem, it was the favorite object of almost every Italian eminent for genius or enterprise during great part of the sixteenth century. They vainly hoped that, by superior skill in the artifices and refinements of negotiation, they should be able to baffle the efforts of nations, less polished indeed than themselves, but much more powerful and warlike. So alluring was the prospect of this to Leo, that, notwithstanding the gentleness of his disposition, and his fondness for the pleasures of a refined

and luxurious ease, he hastened to disturb the peace of Europe, and to plunge himself into a dangerous war, with an impetuosity scarcely inferior to that of the turbulent and martial Julius.[61]

It was in Leo's power, however, to choose which of the monarchs he would take for his confederate against the other. Both of them courted his friendship; he wavered for some time between them, and at first concluded an alliance with Francis. The object of this treaty was the conquest of Naples, which the confederates agreed to divide between them. The pope, it is probable, flattered himself that the brisk and active spirit of Francis, seconded by the same qualities in his subjects, would get the start of the slow and wary counsels of the emperor, and that they might overrun with ease this detached portion of his dominions, ill provided for defence and always the prey of every invader. But whether the French king, by discovering too openly his suspicion of Leo's sincerity, disappointed these hopes; whether the treaty was only an artifice of the pope's to cover the more serious negotiations which he was carrying on with Charles; whether he was enticed by the prospect of reaping great advantages from a union with that prince; or whether he was soothed by the zeal which Charles had manifested for the honor of the Church in condemning Luther, — certain it is that he soon deserted his new ally, and made overtures of friendship, though with great secrecy, to the emperor.[62] Don John Manuel, the

[61] Guic. lib. xiv. p. 173.

[62] Guic. lib. xiv. p. 175. Mém. de Bellay, Par. 1573, p. 24.

same man who had been the favorite of Philip, and whose address had disconcerted all Ferdinand's schemes, having been delivered, upon the death of that monarch, from the prison to which he had been confined, was now the imperial ambassador at Rome, and fully capable of improving this favorable disposition in the pope to his master's advantage.[63] To him the conduct of this negotiation was entirely committed; and being carefully concealed from Chièvres, whose aversion to a war with France would have prompted him to retard or to defeat it, an alliance between the pope and emperor was quickly concluded.[64] The chief articles in this treaty, which proved the foundation of Charles's grandeur in Italy, were, that the pope and emperor should join their forces to expel the French out of the Milanese, the possession of which should be granted to Francis Sforza, a son of Ludovico the Moor, who had resided at Trent since the time that his brother Maximilian had been dispossessed of his dominions by the French king; that Parma and Placentia should be restored to the Church; that the emperor should assist the pope in conquering Ferrara; that the annual tribute paid by the kingdom of Naples to the holy see should be increased; that the emperor should take the family of Medici under his protection; that he should grant to the cardinal of that name a pension of ten

[63] Jovii Vita Leonis, lib. iv. p. 89.

[64] Guic. lib. xiv. 181. Mém. de Bellay, p. 24. Du Mont, Corps Diplom. tom. iv. suppl. p. 96.

thousand ducats upon the archbishopric of Toledo; and should settle lands in the kingdom of Naples, to the same value, upon Alexander, the natural son of Lorenzo de' Medici.

The transacting an affair of such moment without his participation appeared to Chièvres so decisive a proof of his having lost the ascendant which he had hitherto maintained over the mind of his pupil, that his chagrin on this account, added to the melancholy with which he was overwhelmed on taking a view of the many and unavoidable calamities attending a war against France, is said to have shortened his days.[65] But though this, perhaps, may be only the conjecture of historians, fond of attributing everything that befalls illustrious personages to extraordinary causes, and of ascribing even their diseases and death to the effect of political passions, which are more apt to disturb the enjoyment than to abridge the period of life, it is certain that his death, at this critical juncture, extinguished all hopes of avoiding a rupture with France.[66] This event, too, delivered Charles from a minister, to whose authority he had been accustomed from his infancy to submit with such implicit deference, as checked and depressed his genius, and retained him in a state of pupilage unbecoming his years as well as his rank. But this restraint being removed, the native powers of his mind were permitted to unfold them-

[65] Belcarii Comment. de Reb. Gallic. 483.

[66] P. Heuter. Rer. Austr. lib. viii. c. 11, p. 197.

selves, and he began to display such great talents, both in council and in action, as exceeded the hopes of his contemporaries,[67] and command the admiration of posterity.

While the pope and emperor were preparing, in consequence of their secret alliance, to attack Milan, hostilities commenced in another quarter. The children of John d'Albret, king of Navarre, having often demanded the restitution of their hereditary dominions, in terms of the treaty of Noyon, and Charles having as often eluded their requests upon very frivolous pretexts, Francis thought himself authorized by that treaty to assist the exiled family. The juncture appeared extremely favorable for such an enterprise. Charles was at a distance from that part of his dominions; the troops usually stationed there had been called away to quell the commotions in Spain; the Spanish malecontents warmly solicited him to invade Navarre,[68] in which a considerable faction was ready to declare for the descendants of their ancient monarchs. But in order to avoid as much as possible giving offence to the emperor, or king of England, Francis directed forces to be levied, and the war to be carried on, not in his own name, but in that of Henry d'Albret. The conduct of these troops was committed to Andrew de Foix, de l'Esparre, a young nobleman, whom his near alliance to the unfortunate king, whose battles he was to fight, and, what was still more powerful, the interest of his

[67] P. Mart. Ep. 735. [68] Ibid. 721.

sister, Madame de Chateaubriand, Francis's favorite mistress, recommended to that important trust, for which he had neither talents nor experience. But as there was no army in the field to oppose him, he became master, in a few days, of the whole kingdom of Navarre, without meeting with any obstruction but from the citadel of Pampeluna. The additional works to this fortress, begun by Ximenes, were still unfinished; nor would its slight resistance have deserved notice, if Ignatio Loyola, a Biscayan gentleman, had not been dangerously wounded in its defence. During the progress of a lingering cure, Loyola happened to have no other amusement than what he found in reading the lives of the saints: the effect of this on his mind, naturally enthusiastic, but ambitious and daring, was to inspire him with such a desire of emulating the glory of these fabulous worthies of the Roman Church, as led him into the wildest and most extravagant adventures, which terminated at last in instituting the society of Jesuits, the most political and best regulated of all the monastic orders, and from which mankind have derived more advantages, and received greater injury, than from any other of those religious fraternities.

If, upon the reduction of Pampeluna, L'Esparre had been satisfied with taking proper precautions for securing his conquest, the kingdom of Navarre might still have remained annexed to the crown of France, in reality, as well as in title. But, pushed on by youthful ardor, and encouraged by Francis,

who was too apt to be dazzled with success, he ventured to pass the confines of Navarre, and to lay siege to Logrogno, a small town in Castile. This roused the Castilians, who had hitherto beheld the rapid progress of his arms with great unconcern, and the dissensions in that kingdom (of which a full account shall be given) being almost composed, both parties exerted themselves with emulation in defence of their country: the one that it might efface the memory of past misconduct by its present zeal; the other, that it might add to the merit of having subdued the emperor's rebellious subjects, that of repulsing his foreign enemies. The sudden advance of their troops, together with the gallant defence made by the inhabitants of Logrogno, obliged the French general to abandon his rash enterprise. The Spanish army, which increased every day, harassing him during his retreat, he, instead of taking shelter under the cannon of Pampeluna, or waiting the arrival of some troops which were marching to join him, attacked the Spaniards, though far superior to him in number, with great impetuosity, but with so little conduct, that his forces were totally routed, he himself, together with his principal officers, was taken prisoner, and Spain recovered possession of Navarre, in still shorter time than the French had spent in the conquest of it.[69]

While Francis endeavored to justify his invasion of Navarre, by carrying it on in the name

[69] Mém. de Bellay, p. 21. P. Mart. Ep. 726.

of Henry d'Albret, he had recourse to an artifice much of the same kind in attacking another part of the emperor's territories. Robert de la Mark, lord of the small but independent territory of Bouillon, situated on the frontiers of Luxembourg and Champagne, having abandoned Charles's service on account of an encroachment which the Aulic Council had made on his jurisdiction, and having thrown himself upon France for protection, was easily persuaded, in the heat of his resentment, to send a herald to Worms, and to declare war against the emperor in form. Such extravagant insolence in a petty prince surprised Charles, and appeared to him a certain proof of his having received promises of powerful support from the French king. The justness of this conclusion soon became evident. Robert entered the duchy of Luxembourg with troops levied in France, by the king's connivance, though seemingly in contradiction to his orders, and, after ravaging the open country, laid siege to Vireton. Of this Charles complained loudly, as a direct violation of the peace subsisting between the two crowns; and summoned Henry VIII., in terms of the treaty concluded at London in the year 1518, to turn his arms against Francis as the first aggressor. Francis pretended that he was not answerable for Robert's conduct, whose army fought under his own standards and in his own quarrel; and affirmed, that, contrary to an express prohibition, he had seduced some subjects of France into his

service; but Henry paid so little regard to this evasion, that the French king, rather than irritate a prince whom he still hoped to gain, commanded De la Mark to disband his troops.[70]

The emperor, meanwhile, was assembling an army to chastise Robert's insolence. Twenty thousand men, under the count of Nassau, invaded his little territories; and in a few days became masters of every place in them but Sedan. After making him feel so sensibly the weight of his master's indignation, Nassau advanced towards the frontiers of France; and Charles, knowing that he might presume so far on Henry's partiality in his favor as not to be overawed by the same fears which had restrained Francis, ordered his general to besiege Mouson. The cowardice of the garrison having obliged the governor to surrender almost without resistance, Nassau invested Mézières; a place at that time of no considerable strength, but so advantageously situated, that, by getting possession of it, the imperial army might have penetrated into the heart of Champagne, in which there was hardly any other town capable of obstructing its progress. Happily for France, its monarch, sensible of the importance of this fortress, and of the danger to which it was exposed, committed the defence of it to the Chevalier Bayard, distinguished among his contemporaries by the appellation of *The knight without fear and without reproach.*[71] This man,

[70] Mém. de Bellay, p. 22, &c. Mém. de Fleuranges, p. 335, &c.

[71] Œuvres de Brantome, tom. vi. 114.

whose prowess in combat, whose punctilious honor and formal gallantry, bear a nearer resemblance than anything recorded in history to the character ascribed to the heroes of chivalry, possessed all the talents which form a great general. These he had many occasions of exerting in the defence of Mézières. Partly by his valor, partly by his conduct, he protracted the siege to a great length; and in the end obliged the imperialists to raise it, with disgrace and loss.[72] Francis, at the head of a numerous army, soon retook Mouson; and, entering the Low Countries, made several conquests of small importance. In the neighborhood of Valenciennes, through an excess of caution, an error with which he cannot be often charged, he lost an opportunity of cutting off the whole imperial army;[73] and, what was still more unfortunate, he disgusted Charles, duke of Bourbon, high constable of France, by giving the command of the van to the Duke d'Alençon, though this post of honor belonged to Bourbon, as a prerogative of his office.

During these operations in the field, a congress was held at Calais, under the mediation of Henry VIII., in order to bring all differences to an amicable issue; and if the intention of the mediator had corresponded in any degree to his professions, it could hardly have failed of producing some good effect. But Henry committed the sole management of the negotiation, with unlimited powers, to Wol-

[72] Mém. de Bellay, p. 25, &c.

[73] P. Mart. Ep. 747. Mém. de Bellay, 35.

sey; and this choice alone was sufficient to have rendered it abortive. That prelate, bent on attaining the papal crown, the great object of his ambition, and ready to sacrifice everything in order to gain the emperor's interest, was so little able to conceal his partiality, that, if Francis had not been well acquainted with his haughty and vindictive temper, he would have declined his mediation. Much time was spent in inquiring who had begun hostilities, which Wolsey affected to represent as the principal point; and by throwing the blame of that on Francis, he hoped to justify by the treaty of London any alliance into which his master should enter with Charles. The conditions on which hostilities might be terminated came next to be considered; but with regard to these, the emperor's proposals were such as discovered either that he was utterly averse to peace, or that he knew Wolsey would approve of whatever terms should be offered in his name. He demanded the restitution of the duchy of Burgundy, a province the possession of which would have given him access into the heart of France, and required to be released from the homage due to the crown of France for the counties of Flanders and Artois, which none of his ancestors had ever refused, and which he had bound himself by the treaty of Noyon to renew. These terms, to which a high-spirited prince would scarcely have listened, after the disasters of an unfortunate war, Francis rejected with great disdain; and Charles showing

no inclination to comply with the more equal and moderate propositions of the French monarch, that he should restore Navarre to its lawful prince, and withdraw his troops from the siege of Tournay, the congress broke up without any other effect than that which attends unsuccessful negotiations, — the exasperating of the parties whom it was intended to reconcile.[74]

During the continuance of the congress, Wolsey, on pretence that the emperor himself would be more willing to make reasonable concessions than his ministers, made an excursion to Bruges to meet that monarch. He was received by Charles, who knew his vanity, with as much respect and magnificence as if he had been king of England. But instead of advancing the treaty of peace by this interview, Wolsey, in his master's name, concluded a league with the emperor against Francis; in which it was stipulated, that Charles should invade France on the side of Spain, and Henry in Picardy, each with an army of forty thousand men; and that, in order to strengthen their union, Charles should espouse the princess Mary, Henry's only child, and the apparent heir of his dominions.[75] Henry produced no better reasons for this measure, equally unjust and impolitic, than the article in the treaty of London by which he pretended that he was bound to take arms against the French king as the first aggressor, and the injury which

[74] P. Mart. Ep. 739. Herbert.

[75] Rymer, Fœder. xiii. Herbert.

he alleged Francis had done him in permitting the duke of Albany, the head of a faction in Scotland which opposed the interest of England, to return into that kingdom. He was influenced, however, by other considerations. The advantages which accrued to his subjects from maintaining an exact neutrality, or the honor that resulted to himself from acting as the arbiter between the contending princes, appeared to his youthful imagination so inconsiderable, when compared with the glory which might be reaped from leading armies or conquering provinces, that he determined to remain no longer in a state of inactivity. Having once taken this resolution, his inducements to prefer an alliance with Charles were obvious. He had no claim upon any part of that prince's dominions, most of which were so situated that he could not attack them without great difficulty and disadvantage; whereas, several maritime provinces of France had been long in the hands of the English monarchs, whose pretensions even to the crown of that kingdom were not as yet altogether forgotten; and the possession of Calais not only gave him easy access into some of those provinces, but, in case of any disaster, afforded him a secure retreat. While Charles attacked France on one frontier, Henry flattered himself that he should find little resistance on the other, and that the glory of reannexing to the crown of England the ancient inheritance of its monarchs on the Continent was reserved for his reign. Wolsey artfully encouraged

these vain hopes, which led his master into such measures as were most subservient to his own secret schemes; and the English, whose hereditary animosity against the French was apt to rekindle on every occasion, did not disapprove of the martial spirit of their sovereign.

Meanwhile the league between the pope and the emperor produced great effects in Italy, and rendered Lombardy the chief theatre of war. There was, at that time, such contrariety between the character of the French and the Italians, that the latter submitted to the government of the former with greater impatience than they expressed under the dominion of other foreigners. The phlegm of the Germans, and gravity of the Spaniards, suited their jealous temper and ceremonious manners better than the French gayety, too prone to gallantry and too little attentive to decorum. Louis XII., however, by the equity and gentleness of his administration, and by granting the Milanese more extensive privileges than those they had enjoyed under their native princes, had overcome in a great measure their prejudices, and reconciled them to the French government. Francis, on recovering that duchy, did not imitate the example of his predecessor. Though too generous himself to oppress his people, his boundless confidence in his favorites, and his negligence in examining into the conduct of those whom he intrusted with power, emboldened them to venture upon any acts of oppression. The government of

Milan was committed by him to Odet de Foix, Maréchal de Lautrec, another brother of Madame de Chateaubriand, an officer of great experience and reputation, but haughty, imperious, rapacious, and incapable either of listening to advice or of bearing contradiction. His insolence and exactions totally alienated the affections of the Milanese from France, drove many of the considerable citizens into banishment, and forced others to retire for their own safety. Among the last was Jerome Morone, vice-chancellor of Milan, a man whose genius for intrigue and enterprise distinguished him in an age and country where violent factions, as well as frequent revolutions, affording great scope for such talents, produced or called them forth in great abundance. He repaired to Francis Sforza, whose brother Maximilian he had betrayed; and suspecting the pope's intention of attacking the Milanese, although his treaty with the emperor was not yet made public, he proposed to Leo, in the name of Sforza, a scheme for surprising several places in that duchy by means of the exiles, who, from hatred to the French, and from attachment to their former masters, were ready for any desperate enterprise. Leo not only encouraged the attempt, but advanced a considerable sum towards the execution of it; and when, through unforeseen accidents, it failed of success in every part, he allowed the exiles, who had assembled in a body, to retire to Reggio, which belonged at that time to the Church. The Maréchal

de Foix, who commanded at Milan in the absence of his brother Lautrec, who was then in France, tempted with the hopes of catching at once, as in a snare, all the avowed enemies of his master's government in that country, ventured to march into the ecclesiastical territories, and to invest Reggio. But the vigilance and good conduct of Guicciardini, the historian, governor of that place, obliged the French general to abandon the enterprise with disgrace.[76] Leo, on receiving this intelligence, with which he was highly pleased, as it furnished him a decent pretence for a rupture with France, immediately assembled the consistory of cardinals. After complaining bitterly of the hostile intentions of the French king, and magnifying the emperor's zeal for the Church, of which he had given a recent proof by his proceedings against Luther, he declared that he was constrained, in self-defence, and as the only expedient for the security of the ecclesiastical state, to join his arms to those of that prince. For this purpose, he now pretended to conclude a treaty with Don John Manuel, although it had really been signed some months before this time; and he publicly excommunicated De Foix, as an impious invader of St. Peter's patrimony.

Leo had already begun preparations for war by taking into pay a considerable body of Swiss; but the imperial troops advanced so slowly from Naples and Germany, that it was the middle of autumn before the army took the field, under the command of

[76] Guic. lib. xiv. 183. Mém. de Bellay, p. 38, &c.

Prosper Colonna, the most eminent of the Italian generals, whose extreme caution, the effect of long experience in the art of war, was opposed with great propriety to the impetuosity of the French. In the mean time, De Foix despatched courier after courier to inform the king of the danger which was approaching. Francis, whose forces were either employed in the Low Countries, or assembling on the frontiers of Spain, and who did not expect so sudden an attack in that quarter, sent ambassadors to his allies the Swiss, to procure from them the immediate levy of an additional body of troops; and commanded Lautrec to repair forthwith to his government. That general, who was well acquainted with the great neglect of economy in the administration of the king's finances, and who knew how much the troops in the Milanese had already suffered from the want of their pay, refused to set out unless the sum of three hundred thousand crowns was immediately put into his hands. But the king, Louise of Savoy, his mother, Semblancy, the superintendant of finances, having promised, even with an oath, that on his arrival at Milan he should find remittances for the sum which he demanded; upon the faith of this, he departed. Unhappily for France, Louise, a woman deceitful, vindictive, rapacious, and capable of sacrificing anything to the gratification of her passions, but who had acquired an absolute ascendant over her son by her maternal tenderness, her care of his education, and her great abilities, was resolved not to perform this promise.

Lautrec having incurred her displeasure by his haughtiness in neglecting to pay court to her, and by the freedom with which he had talked concerning some of her adventures in gallantry, she, in order to deprive him of the honor which he might have gained by a successful defence of the Milanese, seized the three hundred thousand crowns destined for that service, and detained them for her own use.

Lautrec, notwithstanding this cruel disappointment, found means to assemble a considerable army, though far inferior in number to that of the confederates. He adopted the plan of defence most suitable to his situation, avoiding a pitched battle with the greatest care, while he harassed the enemy continually with his light troops, beat up their quarters, intercepted their convoys, and covered or relieved every place which they attempted to attack. By this prudent conduct, he not only retarded their progress, but would have soon wearied out the pope, who had hitherto defrayed almost the whole expense of the war, as the emperor, whose revenues in Spain were dissipated during the commotions in that country, and who was obliged to support a numerous army in the Netherlands, could not make any considerable remittances into Italy. But an unforeseen accident disconcerted all his measures, and occasioned a fatal reverse in the French affairs. A body of twelve thousand Swiss served in Lautrec's army under the banners of the republic, with which France was in alliance. In consequence of a law

no less political than humane, established among the cantons, their troops were never hired out by public authority to both the contending parties in any war. This law, however, the love of gain had sometimes eluded, and private persons had been allowed to enlist in what service they pleased, though not under the public banners, but under those of their particular officers. The cardinal of Sion, who still preserved his interest among his countrymen and his enmity to France, having prevailed on them to connive at a levy of this kind, twelve thousand Swiss, instigated by him, joined the army of the confederates. But the leaders in the cantons, when they saw so many of their countrymen marching under the hostile standards, and ready to turn their arms against each other, became so sensible of the infamy to which they would be exposed by permitting this, as well as the loss they might suffer, that they despatched couriers commanding their people to leave both armies, and to return forthwith into their own country. The cardinal of Sion, however, had the address, by corrupting the messengers appointed to carry this order, to prevent it from being delivered to the Swiss in the service of the confederates; but being intimated in due form to those in the French army, they, fatigued with the length of the campaign, and murmuring for want of pay, instantly yielded obedience, in spite of Lautrec's remonstrances and entreaties.

After the desertion of a body which formed the strength of his army, Lautrec durst no longer face

the confederates. He retired towards Milan, encamped on the banks of the Adda, and placed his chief hopes of safety in preventing the enemy from passing that river; an expedient for defending a country so precarious, that there are few instances of its being employed with success against any general of experience or abilities. Accordingly Colonna, notwithstanding Lautrec's vigilance and activity, passed the Adda with little loss, and obliged him to shut himself up within the walls of Milan, which the confederates were preparing to besiege, when an unknown person, who never afterwards appeared either to boast of this service, or to claim a reward for it, came from the city, and acquainted Morone that, if the army would advance that night, the Ghibelline or imperial faction would put them in possession of one of the gates. Colonna, though no friend to rash enterprises, allowed the Marquis de Pescara to advance with the Spanish infantry, and he himself followed with the rest of his troops. About the beginning of night, Pescara, arriving at the Roman gate in the suburbs, surprised the soldiers whom he found there. Those posted in the fortifications adjoining to it immediately fled; the marquis, seizing the works which they abandoned, and pushing forward incessantly, though with no less caution than vigor, became master of the city with little bloodshed, and almost without resistance; the victors being as much astonished as the vanquished at the facility and success of the attempt. Lautrec retired precipitately towards the

Venetian territories with the remains of his shattered army; the cities of the Milanese, following the fate of the capital, surrendered to the confederates; Parma and Placentia were united to the ecclesiastical state; and, of all their conquests in Lombardy, only the town of Cremona, the castle of Milan, and a few inconsiderable forts, remained in the hands of the French.[77]

Leo received the accounts of this rapid succession of prosperous events with such transports of joy, as brought on (if we may believe the French historians) a slight fever, which, being neglected, occasioned his death on the 2d of December, while he was still of a vigorous age and at the height of his glory. By this unexpected accident, the spirit of the confederacy was broken, and its operation suspended. The cardinals of Sion and Medici left the army, that they might be present in the conclave; the Swiss were recalled by their superiors; some other mercenaries disbanded for want of pay; and only the Spaniards, and a few Germans in the emperor's service, remained to defend the Milanese. But Lautrec, destitute both of men and of money, was unable to improve this favorable opportunity in the manner which he would have wished. The vigilance of Morone, and the good conduct of Colonna, disappointed his feeble attempts on the Milanese. Guicciardini, by his address and

[77] Guic. lib. xiv. 190, &c. Mém. de Bellay, 42, &c. Galeacii Capella de Reb. gest. pro restitut. Fran. Sfortiæ Comment. ap. Scordium, vol. ii. 180, &c.

valor, repulsed a bolder and more dangerous attack which he made on Parma.[78]

Great discord prevailed in the conclave which followed upon Leo's death, and all the arts natural to men grown old in intrigue, when contending for the highest prize an ecclesiastic can obtain, were practised. Wolsey's name, notwithstanding all the emperor's magnificent promises to favor his pretensions, of which that prelate did not fail to remind him, was hardly mentioned in the conclave. Julio, Cardinal de Medici, Leo's nephew, who was more eminent than any other member of the sacred college for his abilities, his wealth, and his experience in transacting great affairs, had already secured fifteen voices, a number sufficient, according to the forms of the conclave, to exclude any other candidate, though not to carry his own election. As he was still in the prime of life, all the aged cardinals combined against him, without being united in favor of any other person. While these factions were endeavoring to gain, to corrupt, or to weary out each other, Medici and his adherents voted one morning at the scrutiny, which, according to the form, was made every day, for Cardinal Adrian of Utrecht, who at that time governed Spain in the emperor's name. This they did merely to protract time. But the adverse party instantly closing with them, to their own amazement and that of all Europe, a stranger to Italy, unknown to the persons who gave their suffrages in his favor, and unac-

[78] Guic. lib. xiv. 214.

quainted with the manners of the people, or the interest of the state, the government of which they conferred upon him, was unanimously raised to the papal throne, at a juncture so delicate and critical as would have demanded all the sagacity and experience of one of the most able prelates in the sacred college. The cardinals themselves, unable to give a reason for this strange choice, on account of which, as they marched in procession from the conclave, they were loaded with insults and curses by the Roman people, ascribed it to an immediate impulse of the Holy Ghost. It may be imputed with greater certainty to the influence of Don John Manuel, the imperial ambassador, who, by his address and intrigues, facilitated the election of a person devoted to his master's service, from gratitude, from interest, and from inclination.[79]

Beside the influence which Charles acquired by Adrian's promotion, it threw great lustre on his administration. To bestow on his preceptor such a noble recompense, and to place on the papal throne one whom he had raised from obscurity, were acts of uncommon magnificence and power. Francis observed, with the sensibility of a rival, the preeminence which the emperor was gaining, and resolved to exert himself with fresh vigor, in order to wrest from him his late conquests in Italy. The Swiss, that they might make some reparation to the French king for having withdrawn their troops

[79] Herm. Moringi Vita Hadriani, ap. Casp. Burman. in Analect. de Hadr. p. 52. Conclave Hadr. Ibid. p. 144, &c.

from his army so unseasonably as to occasion the loss of the Milanese, permitted him to levy ten thousand men in the republic. Together with this reinforcement, Lautrec received from the king a small sum of money, which enabled him once more to take the field, and, after seizing by surprise or force several places in the Milanese, to advance within a few miles of the capital. The confederate army was in no condition to obstruct his progress; for though the inhabitants of Milan, by the artifices of Morone, and by the popular declamations of a monk whom he employed, were inflamed with such enthusiastic zeal against the French government, that they consented to raise extraordinary contributions, Colonna must soon have abandoned the advantageous camp which he had chosen at Biocca, and have dismissed his troops for want of pay, if the Swiss in the French service had not once more extricated him out of his difficulties.

The insolence and caprice of those mercenaries were often no less fatal to their friends than their valor and discipline were formidable to their enemies. Having now served some months without pay, of which they complained loudly, a sum destined for their use was sent from France under a convoy of horse; but Morone, whose vigilant eye nothing escaped, posted a body of troops in their way, so that the party which escorted the money durst not advance. On receiving intelligence of this, the Swiss lost all patience, and officers, as well as soldiers, crowding around Lautrec, threatened

with one voice instantly to retire, if he did not either advance the pay which was due, or promise to lead them next morning to battle. In vain did Lautrec remonstrate against these demands, representing to them the impossibility of the former, and the rashness of the latter, which must be attended with certain destruction, as the enemy occupied a camp naturally of great strength, and which by art they had rendered almost inaccessible. The Swiss, deaf to reason, and persuaded that their valor was capable of surmounting every obstacle, renewed their demand with great fierceness, offering themselves to form the vanguard, and to begin the attack. Lautrec, unable to overcome their obstinacy, complied with their request, hoping, perhaps, that some of those unforeseen accidents which so often determine the fate of battles might crown this rash enterprise with undeserved success; and convinced that the effects of a defeat could not be more fatal than those which would certainly follow upon the retreat of a body which composed one half of his army. Next morning the Swiss were early in the field, and marched with the greatest intrepidity against an enemy deeply intrenched on every side, surrounded with artillery, and prepared to receive them. As they advanced, they sustained a furious cannonade with great firmness; and, without waiting for their own artillery, rushed impetuously upon the intrenchments. But, after incredible efforts of valor, which were seconded with great spirit by the French, having lost their bravest officers and

best soldiers, and finding that they could make no impression on the enemy's works, they sounded a retreat; leaving the field of battle, however, like men repulsed but not vanquished, in close array, and without receiving any molestation from the enemy.

Next day, such as survived set out for their own country; and Lautrec, despairing of being able to make any further resistance, retired into France, after throwing garrisons into Cremona and a few other places; all which, except the citadel of Cremona, Colonna soon obliged to surrender.

Genoa, however, and its territories, remaining subject to France, still gave Francis considerable footing in Italy, and made it easy for him to execute any scheme for the recovery of the Milanese. But Colonna, rendered enterprising by continual success, and excited by the solicitations of the faction of the Adorni, the hereditary enemies of the Fregosi, who, under the protection of France, possessed the chief authority in Genoa, determined to attempt the reduction of that state; and accomplished it with amazing facility. He became master of Genoa, by an accident as unexpected as that which had given him possession of Milan; and, almost without opposition or bloodshed, the power of the Adorni, and the authority of the emperor, were established in Genoa.[80]

Such a cruel succession of misfortunes affected Francis with deep concern, which was not a little

[80] Jovii Vita Ferdin. Davali, p. 344. Guic. lib. xiv. 233.

augmented by the unexpected arrival of an English herald, who, in the name of his sovereign, declared war in form against France. This step was taken in consequence of the treaty which Wolsey had concluded with the emperor at Bruges, and which had hitherto been kept secret. Francis, though he had reason to be surprised with this denunciation, after having been at such pains to soothe Henry and to gain his minister, received the herald with great composure and dignity;[81] and, without abandoning any of the schemes which he was forming against the emperor, began vigorous preparations for resisting this new enemy. His treasury, however, being exhausted by the efforts which he had already made, as well as by the sums he expended on his pleasures, he had recourse to extraordinary expedients for supplying it. Several new offices were created and exposed to sale; the royal demesnes were alienated; unusual taxes were imposed; and the tomb of St. Martin was stripped of a rail of massive silver, with which Louis XI., in one of his fits of devotion, had encircled it. By means of these expedients he was enabled to levy a considerable army, and to put the frontier towns in a good posture of defence.

The emperor, meanwhile, was no less solicitous to draw as much advantage as possible from the accession of such a powerful ally; and the prosperous situation of his affairs at this time permitting him to set out for Spain, where his presence was ex-

[81] Journal de Louise de Savoie, p. 119.

tremely necessary, he visited the court of England in his way to that country. He proposed by this interview, not only to strengthen the bonds of friendship which united him with Henry, and to excite him to push the war against France with vigor, but hoped to remove any disgust or resentment that Wolsey might have conceived on account of the mortifying disappointment which he had met with in the late conclave. His success exceeded his most sanguine expectations; and, by his artful address, during a residence of six weeks in England, he gained not only the king and the minister, but the nation itself. Henry, whose vanity was sensibly flattered by such a visit, as well as by the studied respect with which the emperor treated him on every occasion, entered warmly into all his schemes. The cardinal, foreseeing, from Adrian's age and infirmities, a sudden vacancy in the papal see, dissembled or forgot his resentment; and as Charles, besides augmenting the pensions which he had already settled on him, renewed his promise of favoring his pretensions to the papacy with all his interest, he endeavored to merit the former, and to secure the accomplishment of the latter, by fresh services. The nation, sharing in the glory of its monarch, and pleased with the confidence which the emperor placed in the English, by creating the earl of Surrey his high-admiral, discovered no less inclination to commence hostilities than Henry himself.

In order to give Charles, before he left England, a

proof of this general ardor, Surrey sailed with such forces as were ready, and ravaged the coasts of Normandy. He then made a descent on Bretagne, where he plundered and burnt Morlaix, and some other places of less consequence. After these slight excursions, attended with greater dishonor than damage to France, he repaired to Calais, and took the command of the principal army, consisting of sixteen thousand men; with which, having joined the Flemish troops under the Count de Buren, he advanced into Picardy. The army which Francis had assembled was far inferior in number to these united bodies; but, during the long wars between the two nations, the French had discovered the proper method of defending their country against the English. They had been taught by their misfortunes to avoid a pitched battle with the utmost care, and to endeavor, by throwing garrisons into every place capable of resistance, by watching all the enemy's motions, by intercepting their convoys, attacking their advanced posts, and harassing them continually with their numerous cavalry, to ruin them with the length of war, or to beat them by piecemeal. This plan the duke of Vendôme, the French general in Picardy, pursued with no less prudence than success, and not only prevented Surrey from taking any town of importance, but obliged him to retire with his army, greatly reduced by fatigue, by want of provisions, and by the loss which it had sustained in several unsuccessful skirmishes.

Thus ended the second campaign, in a war the

most general that had hitherto been kindled in Europe; and though Francis, by his mother's ill-timed resentment, by the disgusting insolence of his general, and the caprice of the mercenary troops which he employed, had lost his conquests in Italy, yet all the powers combined against him had not been able to make any impression on his hereditary dominions; and wherever they either intended or attempted an attack, he was well prepared to receive them.

While the Christian princes were thus wasting each other's strength, Solyman the Magnificent entered Hungary with a numerous army, and, investing Belgrade, which was deemed the chief barrier of that kingdom against the Turkish arms, soon forced it to surrender. Encouraged by this success, he turned his victorious arms against the island of Rhodes, the seat, at that time, of the knights of St. John of Jerusalem. This small state he attacked with such a numerous army, as the lords of Asia have been accustomed, in every age, to bring into the field. Two hundred thousand men, and a fleet of four hundred sail, appeared against a town defended by a garrison consisting of five thousand soldiers, and six hundred knights, under the command of Villiers de L'Isle Adam, the grand-master, whose wisdom and valor rendered him worthy of that station at such a dangerous juncture. No sooner did he begin to suspect the destination of Solyman's vast armaments, than he despatched messengers to all the Christian

courts, imploring their aid against the common enemy. But though every prince in that age acknowledged Rhodes to be the great bulwark of Christendom in the East, and trusted to the gallantry of its knights as the best security against the progress of the Ottoman arms, — though Adrian, with a zeal which became the head and father of the Church, exhorted the contending powers to forget their private quarrels, and, by uniting their arms, to prevent the infidels from destroying a society which did honor to the Christian name, — yet so violent and implacable was the animosity of both parties, that, regardless of the danger to which they exposed all Europe, and unmoved by the entreaties of the grand-master or the admonitions of the pope, they suffered Solyman to carry on his operations against Rhodes without disturbance. The grand-master, after incredible efforts of courage, of patience, and of military conduct, during a siege of six months, — after sustaining many assaults, and disputing every post with amazing obstinacy, — was obliged at last to yield to numbers; and, having obtained an honorable capitulation from the sultan, who admired and respected his virtue, he surrendered the town, which was reduced to a heap of rubbish, and destitute of every resource.[82] Charles and Francis, ashamed of having occasioned such a loss to Christendom by their ambitious contests, endeavored to throw the blame of it on each

[82] Fontanus de Bello Rhodio, ap. Scard. Script. Rer. German. vol. ii. p. 88. P. Barre, Hist. d'Alem. tom. viii. 57.

other, while all Europe, with greater justice, imputed it equally to both. The emperor, by way of reparation, granted the knights of St. John the small island of Malta, in which they fixed their residence, retaining, though with less power and splendor, their ancient spirit, and implacable enmity to the infidels.

END OF VOL. I.